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PUBLICATIONS OF THE UNIVERSITY OF MANCHESTER

HISTORICAL SERIES

No. LII

THE CONSTITUTIONAL DEVELOPMENT  
JAMAICA - - 1660 TO 1729



Published by the University of Manchester at  
THE UNIVERSITY PRESS (H. M. McKECHNIE, M.A., Secretary),  
23 LIME GROVE, OXFORD ROAD, MANCHESTER

# THE CONSTITUTIONAL DEVELOPMENT OF JAMAICA - 1660 TO 1729

*by*  
AGNES M. WHITSON, M.A.

MANCHESTER UNIVERSITY PRESS

1929

*Publications of the University of Manchester*  
*No. CXC.*

**To**  
***My Mother and Father***



## PREFACE

THE constitutional crisis of 1678-80 in Jamaica is important not merely to historians of Jamaica, but to those who are interested in the growth of the rights and powers of colonial government. For this struggle between the Crown and the Assembly of Jamaica resulted in the first victory for the constitutional principle, that the privilege of self-government, once granted by the Crown, is irrevocable.

To show how the crisis arose, I have given an account of the policy of the Crown towards Jamaica, and of the growth of the power and privileges of the island Assembly during the first 20 years after the Restoration. In the struggle of 1678-80, the aim of the Crown was two-fold : to establish in Jamaica a system of government similar to that existing in Ireland under Poyning's Law, and to procure a permanent annual revenue for the support of the island government. The legislative independence of the Assembly was finally secured in 1680; the question of the revenue was not settled till 1728. In continuing my narrative until that date, I have confined myself strictly to the development of this one question, thus necessarily omitting several points of constitutional interest which arose in the early eighteenth century.

"The Constitutional Development of Jamaica" was written as a thesis for the degree of M.A. of the University of Manchester, under the supervision of Mr. C. S. S. Higham, formerly Reader in Modern History in the University; and of Mr. A. S. Turberville, Reader in

History, University of Leeds, formerly of the University of Manchester. To them my sincere thanks are due for their constant help and encouragement during its preparation. I have to thank my sister for assistance in compiling the index and I must gratefully acknowledge the kindness and courtesy of the officials and attendants of the Public Record Office and of the John Rylands Library, Manchester.

AGNES M. WHITSON.

November 1928.

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# BIBLIOGRAPHY

## I. SOURCES.

### A. MANUSCRIPT.

The greater part of the material for this essay is to be found in the Colonial Office Records.

1. General Series 1656-88. C.O. 1/12-68.  
Governors' letters, descriptions of the Colony, reports, etc.
2. Secretaries' Letter Books 1662-88. C.O. 389/4-6, and two notebooks of Secretary Sir Joseph Williamson, 1663-78. C.O. 324/1, 3.
3. Original Correspondence 1689-1728. Board of Trade C.O. 137/1-18. Original Correspondence 1689-1728. Secretary of State. C.O. 137/44-47.  
Governors' letters, reports of the Law Officers, Orders in Council, etc.
4. Entry Books 1661-1728. C.O. 138/1-17.  
Copies of Governors' Commissions and Instructions, of Board of Trade Reports and out-letters.
5. Journals of the Lords of Trade 1675-96. C.O. 391/1-8.
6. Acts 1662-1728. C.O. 139/1-12.  
None of the Acts previous to 1681 have been printed. Those passed in 1688 are missing and those of 1693 exist only in printed form.
7. Sessional Papers C.O. 140/1-20.  
(a) Minutes of Council from June 1661. Lacking from September 1678-May 1682.  
(b) Journals of the Assembly. Begin in February 1674. Lacking for the session of 1681 and for parts of sessions in 1694 and 1695.

### B. PRINTED.

(Unless otherwise stated, place of publication is London.)

1. *Calendar of State Papers Colonial 1574-1660. Calendar of State Papers America and West Indies 1660-1712.*  
(These contain précis of the documents enumerated above up to 1712, but in the earlier volumes the précis is in many cases so brief as to be useless. As only titles of Acts are given, it is always necessary to consult the originals.)
2. *Acts of the Privy Council, Colonial Series.* 3 vols. 1613-1745.
3. *Journals of the Assembly of Jamaica 1663-1826.* 14 vols. and index. Jamaica 1811-1829. (Contain some information not given by the Colonial Office Records, secured from documents in Jamaica.)
4. *Historical Manuscripts Commission.*  
(Very little material for this period.)

5. There are many printed editions of the Laws of Jamaica, but none contain any Acts passed previous to 1681.
  - (a) *Laws of Jamaica passed by the Assembly and confirmed by His Majesty in Council, April 17, 1684.*
  - (b) *Acts of Assembly passed in the Island of Jamaica from 1681 to 1737 inclusive.* 1738. (The Acts of 1688 are missing.)
  - (c) *Acts of Assembly passed in the Island of Jamaica from 1681 to 1769 inclusive.* 2 vols. St. Jago de la Vega 1769-71. (Contain a useful table of all Acts passed, arranged chronologically, showing which Acts are in force and which are expired.)
6. *Voyages of Captain William Jackson.* Edited by V. T. Harlow. Camden Miscellany, vol. XIII. pt. 4. 1923.  
(A description of an English attack on Jamaica a few years before the Conquest.)
7. *The Narrative of General Robert Venables.* Edited by C. H. Firth. Camden Society. 1900. (Describes the conquest of the Island, May-July 1655.)
8. Julian de Castilla. *The English Conquest of Jamaica 1655-56.* Edited by I. A. Wright. Camden Miscellany, vol. XIII., pt. 5. 1923.  
(A vivid picture, written by a Spanish officer, of the Spanish operations against the English army for the first year after the Conquest.)
9. *Interesting Tracts relating to the Island of Jamaica.* St. Jago de la Vega 1800. (A miscellaneous collection containing the proclamation of December 1661, Modyford's Articles of War 1664, Governors' speeches to the Assembly, etc. Useful for Beeston's Journal.)
10. F. Cundall and J. L. Pietersz. *Jamaica under the Spaniards.* Kingston. 1919. (A selection of translated transcripts of documents in the archives of Seville, which throw light on the history of the island under Spanish rule: it gives also several letters from Ysassi, the Spanish commander (1656-60) describing his difficulties.)
11. F. Hanson. *Account of the Island and Government of Jamaica written in the year 1682.* (Bound with the printed collection of laws) St. Jago de la Vega 1793.
12. T. Trapham. *Discourse of the State of Health in Jamaica, 1679.* (Gives a good description of Port Royal, St. Jago, of life and customs in the colony.)

## II. SECONDARY AUTHORITIES.

1. G. L. Beer. *The old Colonial System 1660-88.* 2 vols. New York. 1912. (Vol. I. pp. 208-20 give a brief account of the revenue question in Jamaica.)
2. G. W. Bridges. *Annals of Jamaica.* 2 vols. 1828. (A straightforward narrative, on the whole impartial and reliable.)
3. Bryan Edwards. *A History, Civil and Commercial, of the British West Indies.* 5 vols, 5th edition. 1819. (Devotes much space to Jamaica

in the days of the Spaniards, and dismisses the first twenty years of English Settlement in a few pages and those based on Long. Prints in an appendix several documents dealing with the crisis of 1678-80.)

4. W. J. Gardner. *History of Jamaica*. 1909. (Based almost entirely on secondary authorities and is very inaccurate.)
5. C. H. Haring. *The Buccaneers in the West Indies in XVII. Century*. 1910. (As Jamaica was one of the chief centres of the Buccaneers, so long under official protection, this is useful for the understanding of the relations between Governor and Buccaneers and their influence on the politics of the island.)
6. V. T. Harlowe. *A History of Barbados*. 1625-85. Oxford, 1926.
7. C. S. S. Higham. *The Development of the Leeward Islands 1660-88*. Cambridge 1921.
8. R. M. Howard. *The Longs of Jamaica and Hampton Lodge*. 2 vols. 1925. (For this period, is chiefly a collection of genealogical details of the Longs and planter families connected with them.)
9. E. Long. *A History of Jamaica*. 3 vols. 1774.  
(The author was a descendant of the Samuel Long mentioned in the text and evidently inherited his principles. This is a survey, economic and political, of the state of Jamaica at the time he wrote, with chapters on its history as an English colony. It is based on much patient research and local knowledge and its account of constitutional development—allowing for omissions, particularly in the first sixteen years, and for the author's bias which leads to rhetoric—is reasonably reliable.)
10. C. P. Lucas. *A Historical Geography of the British Colonies*. Vol. II. The West Indies. Oxford 1905. (Chapter on Jamaica from its discovery to the twentieth century.)
11. L. M. Penson. *The Colonial Agents of the British West Indies*. 1924.
12. E. B. Russell. *The review of American Colonial Legislation by the King-in-Council*. Columbia University, New York, 1915. (A study of the principles and methods of the Board of Trade in examining colonial laws sent to England for confirmation. Deals with the constitutional issue in Jamaica 1677-80 as one illustration of the centralising policy of the Crown.)

### III. BIBLIOGRAPHIES.

C. M. Andrews. *Guide to the Materials for American History to 1783 in the Public Record Office of Great Britain*. Washington, 1912.

H. C. Bell, O. W. Parker and others. *Guide to British West Indian Archive Material in London and in the Islands for the History of the United States*. Washington, 1926.

F. Candall. *Bibliographia Jamaicensis* and Supplement. Kingston, 1908. (Books, magazine articles, also manuscripts in the British Museum on every side of Jamaican life and history).

## ABBREVIATIONS

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The following abbreviations are used in the notes :—

<i>Calendar of State Papers Colonial, 1574–1660</i> ... ..	} C.S.P. Col.
<i>Calendar of State Papers American and West Indies, 1661</i> ... ..	
1712 ... ..	
<i>Acts of the Privy Council, Colonial Series</i> ... ..	A.P.C.
<i>Dictionary of National Biography</i> ... ..	D.N.B.
<i>Historical Manuscripts Commission</i> ... ..	H. MSS. C.
<i>American Historical Review</i> ... ..	A.H.R.
<i>English Historical Review</i> ... ..	E.H.R.

Documents are cited under their present call number at the Public Record Office, e.g. C.O. 140/1 :—

1. When the *précis* in the Calendars is not sufficient to give the full meaning. This applies always to quotations from Acts of which the titles only are given in the Calendars.
2. After 1712, for which the Calendars are not yet published.



## FOREWORD

### JAMAICA BEFORE 1660.

The conquest of Jamaica was "the first of the great buccaneering expeditions."<sup>1</sup> In the time of peace between England and Spain, Cromwell secretly prepared a naval and military force and sent it out "to gain an interest in that part of the West Indies in the possession of the Spaniards."<sup>2</sup> He had quite obviously no idea of the difficulties of the task he had set the ill-equipped and ill-trained men under the command of Penn and Venables, but discussed, as if there could be no question of failure, the respective advantages of seizing one or more of the islands, or landing first upon the mainland.<sup>3</sup> The disastrous defeat at San Domingo in April 1655 proved the incapacity of the commanders and the poor quality of the troops. In Jamaica, whither the English turned next, they had better fortune.

Jamaica, discovered by Columbus in 1494, was not occupied by the Spaniards till 1509.<sup>4</sup> Their first settlements were on the north side, but within twenty years, the centre of the colony was moved to St. Jago<sup>5</sup> in the midst of the more fertile and extensive lowlands in the south.<sup>6</sup> The Spaniards displayed little interest in the island and did practically nothing to develop its very rich

<sup>1</sup>C. H. Haring. *The Buccaneers in the West Indie, in the XVII. Century.* p. 89.

<sup>2</sup>*The Narrative of General Venables.* Edited by C. H. Firth. App. A. p. 111.

<sup>3</sup>*Ib.* App. A. p. 112.

<sup>4</sup>C. P. Lucas. *Historical Geography.* II. pp. 94-95. Bryan Edwards. *History of British West Indies.* I. p. 153.

<sup>5</sup>The Spaniards always called the town Villa de la Vega. The English adopted the Spanish name for the Island Santiago, and applied it to the "town on the plain." F. Cundall and J. L. Pietersz. *Jamaica under the Spaniards.* p. 1.

<sup>6</sup>Lucas. *Historical Geography,* p. 96. Bryan Edwards. pp. 162, 173.

natural resources.<sup>1</sup> The trade of the island lay chiefly in supplying fresh provisions to passing ships—for Jamaica lay on the route from Havana to Cartagena, the homeward route of the treasure fleets—<sup>2</sup> and in exporting hides and hogs' grease to Havana and the mainland.<sup>3</sup>

St. Jago was a fair-sized town of "four or five hundred houses, built for the most part with canes, overcast with mortar and lime, and covered with tile," and "beautified with five or six stately churches and chapels."<sup>4</sup> Here was the seat of the government, and here the chief inhabitants lived, visiting their ranches and plantations from time to time. As in the other islands occupied by the Spaniards, the native inhabitants of Jamaica died out<sup>5</sup>; and at the time of the English conquest, the Spaniards worked their estates with slaves, of whom there appear to have been about fifteen hundred.<sup>6</sup> The Spaniards probably numbered about the same.<sup>7</sup> For twenty years the colony had been weakened by factions, for the owner of the island, the Duke of Veragua, a descendant of Columbus, was unable to support his governors or to maintain order.<sup>8</sup> The governors quarrelled with the ecclesiastical authorities, and between 1643 and 1655,

<sup>1</sup>Cundall and Pietersz print many reports sent by officials and others in the West Indies describing the wealth to be gained from the island if it was developed. pp. 35, 40, 49.

<sup>2</sup>Haring. Intro. p. 19.

<sup>3</sup>Lucas. p. 97.

<sup>4</sup>*Voyages of Captain William Jackson.* p. 18.

<sup>5</sup>Cundall and Pietersz. p. 22. In 1598 there were still a few working on the plantations. The Governor suggested that a reservation should be made for them, but the colonists opposed it.

<sup>6</sup>Lucas. p. 98.

<sup>7</sup>*Ib.* p. 98 but cf. Cundall and Pietersz p. 51. Ramirez to the King. May 24, 1655.

<sup>8</sup>That the Duke of Veragua owned Jamaica at the time of the English conquest is disputed. See Lucas, p. 95 note. Julian de Castilla, *The English Conquest of Jamaica 1655-6* says (p. 1) that the island belonged to the Duke. As late as 1646, the Duke had an income from the island and appointed the Governors. Cundall and Pietersz pp. 41-2.

one governor died a prisoner in his own house, one by violence, and one was deposed after a riot and sent to the prison of the Inquisition.<sup>1</sup>

On May 10 1655, the English troops landed at what is now Passage Fort, under a half-hearted fire from the fort guarding the landing place. The following day, still meeting with no resistance, they marched the few miles inland to St. Jago, which they found deserted by its inhabitants and stripped of all goods and valuables. To the envoys sent to him, Venables announced that the English had come to stay ; after a few days of negotiations, a treaty was signed by which the Spaniards agreed to surrender the island, restore the property they had removed from the town and plantations, and the English for their part undertook to provide transport to take the Spaniards to Spanish territory.<sup>2</sup> However, the colonists repudiated the treaty signed on their behalf by their governor ; the more determined sent their wives and families to Cuba and withdrew to the woods and mountains in the north and west to fight under the command of Don Christoval Ysassi Arnaldo.<sup>3</sup>

For the next five years, the position of the English in Jamaica was exceedingly dangerous. The Spaniards waged a ceaseless and harassing guerilla war ; but more serious was the heavy mortality from disease, the lack of provisions, and the lethargy and discontent among the troops. There was plenty of food of a sort to be had from the herds of cattle on the ranches, but when the English went hunting, they were ambushed and killed. Bread and biscuit they could only get from England or the northern colonies on the American mainland.<sup>4</sup> They lost hundreds

<sup>1</sup>Cundall and Pietersz. The Governors were Zegama 1643, Caballero 1650, and Sedeno 1650. pp. 40, 43, 44.

<sup>2</sup>*Narrative of General Venables*, pp. 35-36. Haring, pp. 85-86.

<sup>3</sup>Cundall and Pietersz. p. 52.

<sup>4</sup>The various committees in England charged with the care of Jamaica 1655-60 were continually sending out provisions, or requesting that those bought in New England might be paid for. *C.S.P. Col.* 1574-1660, pp. 431, 433, 434, 438, 440, 452, 459, 460.



from disease, for they had arrived at the most unhealthy time of the year. Men who knew West Indian conditions had urged that any expedition sent out should come in the autumn, not in the early summer, the rainy season and fatal to newcomers from Europe.<sup>1</sup> By November, only 3,720 remained alive out of the 7,000 with which Venables landed.<sup>2</sup> Reinforcements from England suffered severely.<sup>3</sup> In fact, losses from disease were far greater than any inflicted by the Spaniards.

The terribly insanitary conditions in St. Jago<sup>4</sup> and the scarcity of food decided a Council of War early in July 1655, to send the troops by regiments on to the various plantations "that they might fall to work and live (for the future) upon their own endeavours."<sup>5</sup> Each man was given thirty acres of land, the officers proportionately more according to their rank. Then, since Cromwell decided to make Jamaica an English colony, it became the task of the succeeding commanders there to force the unwilling, and at times mutinous troops to cultivate the land given them. Owing to Brayne's<sup>6</sup> determined efforts during 1657, Doyley<sup>7</sup> was able to write that now they had more land under cultivation than ever the Spaniards had ;<sup>8</sup> by 1658 too, he could report that the island was tolerably free from disease.

<sup>1</sup>Thomas Gage, "Some brief and true observations concerning the West Indies," printed in A. P. Watts, *Une Histoire des Colonies Anglaises aux Antilles de 1649 a 1660*. App. iii. pp. 452-7. Thomas Modyford, "A paper concerning the West Indies," *Ib.* App. iv., pp. 457-61.

<sup>2</sup>*Narrative of General Venables*. Intro. p. xxxii.

<sup>3</sup>800 men came with Sedgwick, October, 1655 ; 50 died within a month. 1,200 came with Brayne in January, 1657 ; within two months 400 were dead. Watts, pp. 241, 308.

<sup>4</sup>*H. MSS. C., 7th Report*. App. pt. i., p. 574.

<sup>5</sup>*Narrative of General Venables*, p. 47.

<sup>6</sup>General William Brayne arrived in Jamaica in December 1656, to take over the command of the troops. He died in September 1657. Thurloe, *State Papers* vi., p. 512.

<sup>7</sup>Colonel, afterwards General, Edward Doyley succeeded to the command on Brayne's death ; for his career before he came out in the expedition of 1655, cf. *Narrative of General Venables*, Intro. p. xxvii.

<sup>8</sup>Watts, p. 351.

Fortunately for the English, during these first two or three years, when they were struggling with disease and lack of supplies, they had not to face an organised Spanish invasion. Ysassi and his men received so little help from the other Spanish colonies that they had to restrict their efforts to guerilla war, cutting off small parties exploring or hunting, destroying crops and buildings and carrying off the cattle.<sup>1</sup> When at length in the summer of 1657, considerable reinforcements arrived on the north side of the island, Doyley, who had been warned by intercepted Spanish despatches, promptly sailed round the coast, landed and defeated the newly arrived troops before they could be of any help to Ysassi. This success he repeated the next year, and in 1660.<sup>2</sup> Then even Ysassi despaired, and in May 1660, he sailed away to Cuba with all the remaining Spaniards leaving the freed slaves and their descendants to trouble the English for the next two hundred years.<sup>3</sup>

Though bitterly disappointed by the ill-success of his great scheme, Cromwell characteristically turned his attention from the past failure to securing the welfare of his conquest. Jamaica he determined should be a strong English colony, a starting point for further attacks on the Spanish dominions and trade.<sup>4</sup> The first necessity was settlers. To encourage prospective colonists, he issued in October 1655, a proclamation to give "encouragement to such as shall transport themselves to Jamaica." The island was well defended; those who removed thither would be under the immediate protection of the state. All born within the island would be accounted free denizens of England, and have the privileges of Englishmen. Generous grants of land were promised,

<sup>1</sup>Julian de Castilla, pp. 23-26, gives a vivid picture of Spanish operations. Ysassi to the King, August 10, 1660. Cundall and Pietersz, p. 100.

<sup>2</sup>Watts, pp. 319, 327, 343, 362.

<sup>3</sup>Cundall and Pietersz, p. 102. These negroes were later known as the Maroons.

<sup>4</sup>Watts, p. 261. *C.S.P. Col.* 1675-76. Nos. 230, 231, 232.

and the island exempted from payment of any custom, excise or duty for three years from September 29, 1656.<sup>1</sup> Shortly afterwards, proposals were made to transport several hundred men and women from Scotland and fifteen hundred or two thousand boys and girls from Ireland, but nothing came of them.<sup>2</sup> Every encouragement was given to the wives of soldiers to go out to Jamaica.<sup>3</sup> Settlers in other English colonies were urged to transport themselves to the new conquest. Fourteen hundred under Governor Stokes came from Nevis, and in 1657, five hundred came from Barbados, but all attempts to entice the New Englanders to the island failed.<sup>4</sup>

In 1660, the population numbered between three and four thousand.<sup>5</sup> The English settlements were entirely on the south side, on the old Spanish plantations, from Morant westwards to the Bay of Macario. Cagua,<sup>6</sup> later Port Royal, where the General had a large house, was a prosperous town of between six and seven hundred inhabitants.<sup>7</sup> It had begun its career as a centre of the buccaneers, and was already richer and more populous than St. Jago. One or two sugar mills were working and planting was prospering.<sup>8</sup>

<sup>1</sup>*C.S.P. Col.* 1675-76. No. 229. There is another proclamation printed in Long, *History of Jamaica*. I. pp. 213-4 in which Cromwell told prospective settlers that he had taken care "for the constituting and settling a civil government, by such good laws and customs as are or have been exercised in colonies and places of the like nature."

<sup>2</sup>*C.S.P. Col.* 1574-1660, pp. 430, 440. Gardiner, *Commonwealth and Protectorate*. III. p. 453-5.

<sup>3</sup>*C.S.P. Col.* 1675-76. Nos. 302, 341, 342.

<sup>4</sup>*Ib.* 1574-1660, p. 429. Gookin's mission to New England. Watts, pp. 299-300, 341.

<sup>5</sup>*C.S.P. Col.* 1661-8. No. 204. The total white population is given as 2,956. Doyley writing to Nicholas on September 11 1660, gives "near two thousand officers and soldiers besides seamen," as the number under his command. *Ib.* 1574-1660, pp. 489, 491.

<sup>6</sup>Brayne began to build the town. Watts, p. 320.

<sup>7</sup>*C.S.P. Col.* 1661-8. No. 204. The numbers are 400 men, 150 women and 80 children, while St. Jago had a total population of 300.

<sup>8</sup>*Ib.* 1675-76. Nos. 308, 319.

The English were still, however, an army in occupation of conquered territory, ruled by military commissioners and under martial law. In 1660, Doyley, the acting commander, was in despair ; for the unsettled state of affairs in England made it impossible for him to know to whom to apply for orders and assistance.<sup>1</sup> His position was in any case precarious, for his authority rested upon a letter written by Brayne a few days before his death, transferring to Doyley all the powers of his—Brayne's—commission,<sup>2</sup> but Doyley had received no confirmation from England. He had had a difficult task, but owing in great part to his energy and determination, he appears to have been fairly successful in maintaining order and furthering the settlement of the island.

<sup>1</sup>*Ib.* 1574-1660, p. 480. June 1 1660. Doyley to the Commissioners of the Admiralty.

<sup>2</sup>Thurloe, *vi.*, p. 483. The letter is dated August 17 1657.

## CHAPTER I.

### RESTORATION POLICY AND THE PROBLEM OF JAMAICA. 1660-1662

The question what was to be done with Jamaica was merely one of the many problems of colonial policy at the Restoration. The island had been conquered only five years before by the common enemy of Charles and Spain, and Spain had been a good friend to Charles in his exile. It had cost Cromwell large sums of money; it was neither a large nor a flourishing settlement. It was true all who knew the island said it was richer than any of the English West Indies,<sup>1</sup> but it would be several years before any profits from it could be looked for, and in the meantime its defence and the maintenance of any government there would be a great personal expense to the King. The merchants, however, were keenly interested in Jamaica, which seemed to offer them the new openings for trade for which they had been searching.<sup>2</sup> According to the economic theory of the time,<sup>3</sup> Jamaica would become exactly the type of colony most valuable to England, one which grew commodities which England needed both for herself, and for the expansion of her trade on the continent. It was much larger than Barbados, would

<sup>1</sup>*C.S.P. Col.* 1574-1660, p. 491. *Ib.* 1661-8. No. 57. "The island is a gallant island, and I am confident, very healthy; great store of good fruit it beareth, and many other good commodities naturally; it will produce as good a trade as any in America." *H. MSS. C. 7th Report. App.i.*, p. 575.

Its sugar, cocoa "of which this island hath many walks and an aptness to produce greater plenty," tobacco, "very good though not so well made by our soldiers as the Spaniards," were already known in England. *C.O.* 324/1.

"This island for the richness and goodness of the soil, for the pleasantness of its woods, and the abundance of all good things may very well contend with any other of the American Islands whatever. . . ." *A True Description of Jamaica.* 1657. p. 2.

<sup>2</sup>*C. M. Andrews. British Committees, Commissions and Councils of Trade and Plantations*, p. 50.

<sup>3</sup>*G. L. Beer. The Old Colonial System.* I., pp. 35-49. II., pp. 47-48.

produce the same crops and would be correspondingly more valuable.<sup>1</sup>

Whatever may have been the deciding factor, hope of economic advantages in the future, national pride, or fear of the unpopularity which the surrender of a conquest to the old enemy Spain, would arouse, it was soon clear that there was no intention of yielding up Jamaica. Immediately upon his arrival in England, Charles made friendly advances to Spain. In September 1660, he issued a proclamation for the cessation of hostilities and began negotiations for a definitive treaty of peace between the two countries.<sup>2</sup> But at the same time, the state of Jamaica was specially called to the attention of the Committee of the Privy Council for Foreign Plantations;<sup>3</sup> and on October 17, a special committee consisting of Albemarle, the two Secretaries, Nicholas and Morice and Arthur Annesley, was appointed for Jamaica.<sup>4</sup> On December 5, the Privy Council, in a formal reply to the Spanish demand for the return of Jamaica, stated that the King of England was extremely anxious to remain on good terms with His Catholic Majesty, but he did not consider that either his proclamation of September, or the treaty of 1636 renewed by it—both cited by the Spanish ambassador as grounds for his demand—applied to the case of Jamaica.<sup>5</sup>

Having decided to keep the island, Charles and his ministers had then to establish some kind of government there, and to hasten its settlement by every possible

<sup>1</sup>One of the favourite arguments in favour of keeping Jamaica, was that its very distance from England was an advantage as it thus employed more men and ships. C.O. 324/1.

<sup>2</sup>S.P. Spain, Vol. 44, f. 318, cited in Haring, p. 100.

<sup>3</sup>September 5 1660, *A.P.C. I.* No. 489. For the working of the committees of the Privy Council, cf. E. R. Turner, "Committees of Council and the Cabinet." *A.H.R.* 19, pp. 772-793, and for those dealing with the Plantations in particular, Andrews, *British Committees*, *passim*.

<sup>4</sup>*A.P.C. I.* No. 491. Doyley's letter of July 26 describing the desperate condition of the army and the ships was read in Council on the 17th.

<sup>5</sup>*Id.* No. 501.

means. All reports from Jamaica told the same tale; the people restless and depressed by "a sense of being deserted" by their country, General Doyley dissatisfied with his ambiguous position and eager to return to England.<sup>1</sup> When it was appointed, the special committee for Jamaica was ordered to prepare "a commission for Edward Doyley to be Governor. . . . until further order."<sup>2</sup> At the end of November 1660, the draft was ready,<sup>3</sup> but the commission with the instructions was not issued till February 1661.<sup>4</sup> Doyley was appointed Governor and was to act with an elected Council of twelve members.<sup>5</sup> With the Council's consent, he was to establish civil courts, and pass acts and ordinances for the welfare and security of the island, but the army was left in being. This arrangement was admittedly a temporary measure intended to regularise Doyley's position until a new Governor could be appointed to organise the government on a permanent basis.

In June 1661,<sup>6</sup> Lord Windsor<sup>7</sup> was appointed Governor of Jamaica with a salary of £2,000 a year payable out of the English Exchequer.<sup>8</sup> On July 3, a special committee of the Privy Council, which included Clarendon, Southampton, Lord Ashley and the Secretaries, Nicholas and Morice, was set up "to consider and frame a model for the Government of His Majesty's Island of Jamaica and to prepare a draft of such instructions as

<sup>1</sup>C.S.P. Col. 1574-1660, p. 485. *Ib.* 1661-8. Nos. 58, 68.

<sup>2</sup>A.P.C. I. No. 491.

<sup>3</sup>*Ib.* No. 500.

<sup>4</sup>C.S.P. Col. 1661-8. Nos. 20, 22. The commission is dated February 8.

<sup>5</sup>The Secretary was *ex-officio* to be a member of the Council. *Ib.* No. 20.

<sup>6</sup>A.P.C. I. No. 516.

<sup>7</sup>7th Baron Windsor of Stanwell, afterwards first Earl of Plymouth. At this time he was about 35. He had served for a short time in the Royal army during the Civil War but after 1646 had taken no further part in public affairs. *D.N.B.* Windsor, pp. 646-48.<sup>4</sup>

<sup>8</sup>C.S.P. Col. 1661-8. No. 135.

they shall conceive fit and necessary for the increase and preservation of His Majesty's interest and the encouragement of His Majesty's subjects there."<sup>1</sup> The result of its deliberations was the commission<sup>2</sup> and instructions<sup>3</sup>—dated respectively August 2 1661, and March 21 1662—which established the form of government enjoyed by Jamaica unquestioned for fifteen years, a government like those of Barbados and Virginia, of a Governor appointed by the Crown, acting with the advice of a nominated Council, and of a legislature of Governor, Council and representative Assembly.

Windsor as Governor and Captain-General of Jamaica, had power to grant commissions and erect courts of Admiralty;<sup>4</sup> to appoint his Council,<sup>5</sup> and with their advice and consent, establish civil judicatures and pass acts and ordinances for the well-being and security of the colony. This legislative power is the same as that given to Doyley, but there is this important difference, that Doyley's Council was elected, Windsor's was not. The wording of the clause is vague. Windsor, with the Council, was authorised to make laws "according to such powers and authorities as are now by this present commission granted unto you, and such reasonable laws, customs and constitutions as are exercised and settled in our other colonies and plantations; or such other (s)

<sup>1</sup>*A.P.C.* I, No. 522.

<sup>2</sup>*C.S.P. Col.* 1661-8. No. 145.

<sup>3</sup>*Ib.* No. 259. <sup>4</sup>*Ib.* No. 145.

<sup>5</sup>The commission said the Council was "to be elected as shall be appointed in our said instructions." The instructions authorise him to "appoint and constitute" a Council. That he did appoint his Council is clear from the evidence of the Assembly and Lynch. *Journals of the Assembly of Jamaica*, I. p. 27. *C.S.P. Col.* 1677-80. No. 1234.

The men who prepared Doyley's commission had a hand in drafting Windsor's, which may account for the provision in the latter for an elective council and the law making power conferred on Governor and Council. Then between August 2 1661, and March 21 1662, it was decided to give Jamaica an elective Assembly, so in the instructions, the Governor is to nominate his Council, and is empowered to summon an Assembly. This would explain the conflicting clauses in the Commission and Instructions.



[laws] as shall upon mature advice and consideration be held necessary and proper for the good government and security of our said Island of Jamaica. . . . Provided they be not repugnant to our laws of England, but agreeing thereto, as near as the condition of affairs will permit."<sup>1</sup> The clause might be taken as conferring on the Governor and Council independent legislative power, for there is no mention of an Assembly with a share in legislation in the commission, but the Assembly of Jamaica at its very first meeting stopped any such claim on the part of the Governor and Council.<sup>2</sup>

By the twentieth clause of his instructions,<sup>3</sup> Windsor was empowered "with the advice of the Council to call Assemblies together according to the custom of our plantations, to make laws and upon eminent necessities to levy monies," provided that the laws so made "be not repugnant to any of our laws of England, and that such laws shall be in force for two years and no longer unless they shall be approved and confirmed by us." By these provisos, the Crown reserved to itself the control of colonial legislation. Not satisfied with conferring on the Governor a power of veto, it kept in England the final decision as to how far colonial laws conformed to English legal principles, how far they were expedient, for the particular colony and from the Imperial standpoint. Supervision of this kind was necessary, not merely for the sake of English interests, but for the sake of the colonies. The local Assemblies, concentrating in themselves the particularism of each colony, the narrow outlook of the dominant class, whether planter or Puritan, with an ignorance and selfishness only equalled by their self-complacency, were capable of doing each other, and weaker classes within their power, serious harm and injustice.

<sup>1</sup>*C.S.P. Col.* 1661-8. No. 145.

<sup>2</sup>*Cf. infra* pp. 23-4.

<sup>3</sup>*C.S.P. Col.* 1661-8. No. 259.

Finally Windsor was ordered to disband the army, and reorganise the men as a militia, keeping four hundred foot and a hundred and fifty horse still in pay; to ratify former and make new grants of land, and in every way encourage the settlement of the island.<sup>1</sup>

A flourishing colony would pay both the King and the merchants. Jamaica must have settlers; for without inhabitants it could neither supply England with the commodities she wanted, nor be a vent for English goods, and, without trade it would be valueless to the King's revenue.<sup>2</sup> In this matter of planting Jamaica, the Council for Foreign Plantations, not the committees of the Privy Council, took the leading part.<sup>3</sup> On January 7, 1661,<sup>4</sup> the Council for Foreign Plantations appointed a committee to prepare a report on the state of Jamaica, and during the spring and summer it was very active in collecting information from reports and proposals, and by examining those who had any knowledge of the island.<sup>5</sup> Many of its members, from serving on the various plantation committees and councils of the Protectorate, had experience in colonial business and knowledge of colonial conditions, and some of them had been from the first closely connected with Jamaica.<sup>6</sup> All classes of

<sup>1</sup>*C.S.P. Col.* No. 259, 287.

<sup>2</sup>Josiah Child. *A New Discourse of Trade* (1757), p. 134, "Lands (though excellent) without hands proportionable, will.....wreck any Kingdom."

<sup>3</sup>Two special committees were appointed to deal with Jamaica in 1660-1, the first on October 17 1660, the second on June 5 1661.

<sup>4</sup>*C.S.P. Col.* 1661-8, No. 3. This was the first meeting of the newly created Council.

<sup>5</sup>*Ib.* Nos. 3, 5, 56, 80. *Ib.* 1574-1660, p. 491. *Ib.* 1675-76. *Addenda*, No. 364, June 11. The entry in the Minutes runs, "Every member of this Council is desired to bring in the best information he can of the condition of Jamaica, on Monday next, and to request any persons they may know lately come from thence to be present." *Ib.* No. 103.

<sup>6</sup>Ashley Cooper, Martin Noell and Thomas Povey are three well-known names. Noell had a large plantation in Jamaica and was particularly active in developing it. Povey's brother Richard was Secretary of Jamaica. *C.S.P. Col.* 1661-8, No. 4. *Ib.* 1675-76, No. 232. Cf. Watts, *Histoire des Colonies Anglaises*, App. i., pp. 447-50, for the various plantation councils and committees under the Protectorate on which they served.

settlers were required, men of family with money to develop the land, craftsmen and servants. With regard to the servants, the indenture system and the transportation of criminals with slaves supplied by the African Adventurers, would, it was hoped, supply all the needs of the planters. But the other classes would not go to Jamaica unless they were offered advantages at least equal to those they already possessed in England, or could hope for in the other plantations, and to them, uncertainty as to the Crown's policy in regard to the government, religion, and the granting of land was the chief obstacle.

The first and most important question for a prospective settler was what kind of government and what kind of laws he would find in Jamaica. As Jamaica was a conquest, it lay in the Crown's hands to set up whatever political and legal system it chose.<sup>1</sup> Now, no man was going to leave England and venture himself, his family and his property, in the new colony until he knew that he would not, by so doing, deprive himself and his children of any of the rights and safeguards for life and property which as an English subject he enjoyed in England.<sup>2</sup> Windsor's commission and instructions made it plain that the Crown intended to give to the people of Jamaica the same privileges of legislation as their countrymen in Barbados and Virginia enjoyed. They were to have the right to tax themselves.<sup>3</sup> Other privileges were set forth in the King's proclamation of December 14 1661<sup>4</sup>,

<sup>1</sup>*C.S.P. Col.* 1675-76. No. 972. "But this, I conceive, is plain, that by his Majesty's acquisition of that country, he is absolute sovereign and may impose what form of constitution both of government and laws he pleaseth, and the inhabitants are in no sort entitled to the laws of England or to be governed thereby but by mere grace and grant of the King." An opinion attributed by the editor of the *C.S.P.* to the Attorney-General. 1676.

<sup>2</sup>*C.S.P. Col.* 1675-76. No. 297. People were afraid that "They shall be under martial authority and so incapable of that law and government that is suitable to a settlement."

<sup>3</sup>*C.S.P. Col.* 1661-8. No. 259. The Crown reserved to itself the right to impose a 5 per cent. *ad valorem* duty on all exports from the island at the end of seven years. Such a duty was never imposed.

<sup>4</sup>*Ib.* No. 195.

which as well as Windsor's instructions, embodied many of the proposals of the Council for Foreign Plantations.

In its report of June 17 1661,<sup>1</sup> that Council suggested that as an encouragement to settlement, all born or to be born of English parents in any of the plantations should be declared by Act of Parliament to be naturalised English subjects to all intents and purposes whatsoever. Ten days later, it suggested the issue of a royal proclamation "declaring upon what encouragements people may settle in Jamaica."<sup>2</sup> On July 3, the Privy Council accepted these proposals, and the special committee appointed to frame a model for the government of Jamaica was also to prepare a "draft of such instructions as they shall conceive fit and necessary for the increase . . . of His Majesty's interest, and the encouragement of His Majesty's subjects there."<sup>3</sup> Two days before this, on July 1, the Council for Foreign Plantations had agreed to propose that in the King's proclamation for the encouragement of the planters in Jamaica, it be declared that they shall be governed by the laws of England.<sup>4</sup> The King's proclamation was published on December 14, 1661. After stating the generous terms upon which land would be granted, the King promised "that all children of any of our natural born subjects of England to be born in Jamaica shall, from their respective births, be reputed to be, and shall be, free denizens of England, and shall have the same privileges to all intents and purposes as our free-born subjects of England." The Crown here did by prerogative for Jamaica what the Council for Foreign Plantations had urged should be done for all the colonies by Act of Parliament. Although the legislative supremacy of Parliament over the colonies was generally admitted, colonial affairs had been and were still considered at the Restoration and for years after the special business of the Crown. Charles and his ministers probably thought the Council's proposal as to method unnecessary, if not an encroachment on the prerogative.

<sup>1</sup>*Ib.* No. 107. <sup>2</sup>*Ib.* No. 118. <sup>3</sup>*A.P.C.* I. No. 522.

<sup>4</sup>*C.S.P. Col.* 1661-8. No. 122.

This proclamation did not mention the laws of England. Was the omission the result of deliberate policy, or was it considered unnecessary to make specific reference to the laws of England, as they were part of the privileges of free-born subjects of England? The importance of the question is that if in 1661 the Crown purposely refrained from conferring the right to the laws of England on the people of Jamaica, it must have realised from the first how serious a limitation the right would place upon its prerogative power. 'It was because the Lords of Trade saw this, that they always objected so strongly to the re-enactment of English laws by the local Assemblies, or to acts which declared the laws of England wholly or partially in force.'<sup>1</sup>

The "laws of England" included common as well as statute law,<sup>2</sup> and from the point of view of the liberty of the subject the common law was as important, if not more important than statute law. In colonies settled by English subjects, they took with them the right to the laws of England.<sup>3</sup> But Jamaica's position was different ;

<sup>1</sup>E. B. Russell. *Review of American Colonial Legislation*, p. 140. Cf. C.S.P. Col. 1706-8. No. 164. Attorney-General Northey on an Act of the Leeward Islands. "So General an enacting the Common Law of England to be in force in the Plantations as a certain rule whereby the rights and properties of H.M.'s subjects there are to be determined, is not fit to be confirmed, the same entrenching on H.M.'s prerogative which is different in those places from what it is in England." Cf. *infra* p. 72.

<sup>2</sup>Cf. the preambles to the Acts of Assembly of Jamaica "declaring the laws of England in force in this Island." C.O. 139/1, pp. 65, 117.

<sup>3</sup>A theory as to how far the laws of England were in force in the colonies was only worked out after the Restoration as the colonists began to claim a right to them. It is a point that might repay study. Briefly it would appear that the distinction between colonies acquired by settlement, and colonies acquired by conquest was made many years before Holt, C. J. in *Blankard v. Galdy*, 1694, explicitly stated it. Cf. opinion of Attorney-General in 1676 cited above, p. 14, note 1. Holt stated that in settled colonies "all the laws in force in England are in force there," but that in conquered colonies "the laws of England do not take place there until declared by the conqueror." (1694) 2 Salk 411. cited in W. S. Holdsworth *History of English Law*, VI., p. 264. The Board of Trade, for a time, however, appear to have refused to admit even the common law in settled

as a conquered island, all the rights which the people there had were granted to them by the Crown; therefore the Council for Foreign Plantations suggested that among other privileges the King should give the people of Jamaica the laws of England. But they clearly did not mean that the whole system of English law should be transported to Jamaica, for "the absurdity of forcing the polity of a long established community upon newly settled colonies"<sup>1</sup> was always realised in England. The Council for Foreign Plantations was thinking rather of giving the people in Jamaica the right which their countrymen in other colonies enjoyed, of supplementing the laws they made themselves by using on occasion the laws of England. Judging from the practice in the other colonies, there would be no eagerness to adopt them wholesale.<sup>2</sup> When the Council used the words laws of England, they meant the laws of England as they affected the relations of subject and subject, not subject and Crown.<sup>3</sup> There was no reason in 1661 to think that colonies, cf. opinion of Attorney-General quoted *supra*, note 1. Finally, the legal position was stated by Mr. West (1720) and Attorney-General Yorke (1729):—The common law and such of the statutes of England as had been passed before the settlement of a colony were in force there. No statutes passed after its settlement applied to it unless the colony was particularly mentioned.

Forsyth. *Cases and Opinions in Constitutional Law*, pp. 1, 2.

<sup>1</sup>Russell. *Review of American Colonial Legislation*, p. 139.

<sup>2</sup>P. S. Reinsch. *English Common Law in the Early American Colonies*, discussing how far the early colonists used the common law, states that the colonial codes "were in the first decades of the colonies almost the sole source of legal knowledge, of rules of adjudication," because men "who had taken up their abode in a wilderness without books or facilities for legal studies... in the nature of things could not use a system which like the common law... necessitated a vast apparatus of technical treatises," p. 53. The New England states definitely rejected the laws of England as a subsidiary system in favour of the laws of God: Virginia and Maryland adopted them. *Ib.* pp. 11-29, 47.

<sup>3</sup>Cf. the policy of the Crown as expressed in the King's letter to Lynch, January 15 1673, Lords of Trade to Vaughan, 28 July 1676, and the 16 clause of Vaughan's instructions. *C.S.P. Col.* 1669-74. Nos. 1024, 1252. *Ib.* 1675-6. No. 1001. *A.P.C. I.* No. 1091.

they would ever be used as a weapon against the Crown's prerogative ; such a practice only developed in the latter part of the seventeenth century, as the colonies found their freedom endangered by the Crown's attacks on their charters and liberties. Therefore, when the proclamation of December 1661 did not contain any reference to the laws of England, it was merely because it was thought unnecessary ; and there can be little doubt that Windsor correctly interpreted the royal policy when on his arrival at Barbados he issued a proclamation promising that justice should be administered according to the " known laws of England," or laws made by the freeholders themselves.<sup>1</sup>

With regard to the land, the Crown's policy was to grant it on generous terms to all who would go out to make their homes in Jamaica. The Council for Foreign Plantations hoped that when the army was disbanded by Windsor, most of the men would remain as planters in the island. In June 1661 it therefore proposed that to every man fifty acres should be granted, with thirty more for his wife and every servant over fourteen years of age.<sup>2</sup> Ten days later, it suggested that for seven years the land should be rent free, but that after that period, there should be a five per cent. *ad valorem* duty on all native goods exported from Jamaica.<sup>3</sup> The proclamation of December 1661<sup>4</sup> in the main adopted these proposals. It offered thirty acres of land to anyone over twelve years of age, who within the next two years should apply for land, and would undertake to settle in Jamaica within six months after his application ; the land would be granted rent free, the only obligation being to serve in arms for the defence of the island. All free persons had liberty to transport themselves and their families to Jamaica from any part of the King's dominions. But the Crown rapidly repented of this excessive generosity. Windsor was ordered to reserve

<sup>1</sup>*C.S.P. Col.* 1661-8. No. 324.    <sup>2</sup>*C.S.P. Col.* 1661-8. No. 107.

<sup>3</sup>*Ib.* No. 118.    <sup>4</sup>*Ib.* No. 195.

fit rents to the King in all land patents ; a further clause in his instructions exempted all goods exported from Jamaica for seven years ; after that time, the five per cent. duty suggested by the Council for Foreign Plantations was to be imposed.<sup>1</sup>

In religion, while favouring the Church of England, the Crown gave toleration to all Protestants willing to live peaceably under the King's government. Windsor's instructions charged him to see " that Christianity and the Protestant religion according to the doctrine and discipline of the Church of England may have due reverence and exercise " in Jamaica.<sup>2</sup> The Council for Foreign Plantations urged that the Archbishop of Canterbury and the Bishop of London should choose five ministers to be maintained for a year at the King's expense. The Crown accepted the proposal,<sup>3</sup> but it was two years before two chaplains were actually sent out.<sup>4</sup> At the same time, there was to be freedom for all Protestants willing to live peaceably, and Windsor was ordered to insist on officers only taking the oath of supremacy ; it would be sufficient if others, all over 16, took the oath of allegiance.<sup>5</sup>

At length, in the early summer of 1662, Windsor sailed for Jamaica, to take to the people there the assurance of the King's particular favour, and the benefits of a settled government.

<sup>1</sup>*C.S.P. Col.* 1661-8. No. 259. <sup>2</sup>*Ib.* <sup>3</sup>*Ib.* No. 118. *Ib.* No. 401. <sup>4</sup>*A.P.C. I.* No. 899. *C.S.P. Col.* 1677-80. No. 515. <sup>5</sup>*Ib.* 1661-8. No. 259.



## CHAPTER II.

### THE ESTABLISHMENT OF CIVIL GOVERNMENT. 1661-1671.

News of the King's restoration was received in Jamaica in the late summer of 1660,<sup>1</sup> but it was nearly ten months before Doyley received the royal commission. On June 18 1661, he held the first meeting of the newly-elected Council<sup>2</sup> and began the work of substituting a civil for a military government. The members of the Council were sworn as Justices of the Peace ; three courts of law, at Morant, Cagua, and St. Jago respectively, were established and various ordinances issued.<sup>3</sup> One of these was for a duty on all liquors imported into the island, and a tax of 1/- per ton burthen on all ships<sup>4</sup> ; no further progress was made in putting the government on a civil basis, and the settlement remained, in spite of the commission and the elected Council, essentially a military one.<sup>5</sup> Doyley was probably not very enthusiastic ; his failure to obtain from Cromwell any recognition of his authority as commander in Jamaica had so increased his difficulties that he had determined to return to England as soon as possible,<sup>6</sup> and he knew that he was now merely a stop gap.

On his journey out, Lord Windsor, the new Governor, stopped at Barbados, where in obedience to royal orders he

<sup>1</sup>Writing to the Commissioners of the Admiralty on July 26, 1660, Doyley was still ignorant of what had happened in England. His earliest letter to Nicholas is dated September 11, 1660. *C.S.P. Col.* 1574-1660. pp. 485, 489.

<sup>2</sup>*Ib.* 1661-8. No. 108. The Council was summoned by a writ in the King's name, *Journals* I., p. 27, but there is no record of elections taking place, nor of how the representation was arranged.

<sup>3</sup>*C.S.P. Col.* 1661-8. No. 108.

<sup>4</sup>*C.O.* 139/1, pp. 1, 4. *See* App. ii. Doyley first imposed a tax on all imported liquors in January 1660. *C.S.P. Col.* 1675-6. No. 332.

<sup>5</sup>*Ib.* 1661-8. No. 379.

<sup>6</sup>He had asked to be relieved of his command as early as 1657. Thurloe, VI. p. 512. Cf. "Beeston's Diary," printed in *Interesting Tracts relating to the Island of Jamaica*, pp. 274-5.

was given every facility to collect settlers for Jamaica.<sup>1</sup> Here he published the proclamation mentioned earlier.<sup>2</sup> After setting forth the advantages to be obtained by settling in the new colony, generous grants of land, religious freedom, and free trade with all nations, he promised "that in all things, justice shall be duly administered, and that agreeable to the known laws of England, or such other laws not repugnant thereunto as shall be enacted by the consent of the free persons of the said island" of Jamaica.<sup>3</sup> Encouraged by these offers, several hundred settlers sailed with Windsor, arriving in Jamaica in the middle of August 1662.<sup>4</sup>

Windsor stayed only two months in the island. Either on account of ill-health, as Secretary Povey says,<sup>5</sup> or wearied "of being upon service out of his own country where he might have pleasure" as Pepys more unkindly suggests,<sup>6</sup> he decided to return to England to report on his work as he had been authorised to do.<sup>7</sup> According to his own account, "the condition of Jamaica was quite altered by my coming, being before under no civil government, and left by me regulated (as much as the nature of a plantation can allow) to the laws and government of England."<sup>8</sup> A sweeping claim this; ignoring Doyley's fourteen months of office under the King's commission, and scarcely justified by Windsor's accomplishments. The colonists, it is true, considered that civil government was not established till Windsor's time.<sup>9</sup> As long as the army organisation remained, no one could feel that there was a civil government: in disbanding the army

<sup>1</sup>*C.S.P. Col.* 1661-8. Nos. 297, 326, 327. The Barbadians were not at all willing to allow people to go with Windsor, but were compelled to obey the royal command. Harlowe. *History of Barbados*, p. 139.

<sup>2</sup>*Supra*, p. 18. <sup>3</sup>*C.S.P. Col.* 1661-8. No. 324.

<sup>4</sup>*Ib.* Nos. 355, 375. His first Council was held on the 20th and his permission to return to England read on October 24. "Beeston's Diary" in *Interesting Tracts*, p. 271.

<sup>5</sup>Long I. p. 216. <sup>6</sup>*Pepys Diary*, 23 February, 1663.

<sup>7</sup>*C.S.P. Col.* 1661-8. No. 294. <sup>8</sup>*Ib.* No. 379 <sup>9</sup>*Ib.* 1677-80. No. 1188.

and reorganising the men into regiments of militia,<sup>1</sup> Windsor gave the people a visible sign of the change. It was perhaps his most important piece of work. In addition, he established an Admiralty court with William Mitchell, one of the Council as Judge, drew up regulations for the law courts, for the patenting of land grants and for other purposes.<sup>2</sup>

Windsor left Sir Charles Littleton<sup>3</sup> as his Deputy-Governor, and for a year after his departure, government by Governor and Council continued. When laws were needed, they were "enacted and ordained by the Governor and Council and by the authority of the same."<sup>4</sup> Doyley's Act "for the raising of a public revenue out of all strong liquors imported into this island" was expanded, a tax of £4 per tun on Madeira being added.<sup>5</sup> As this Act was superseded by the Acts of the Assembly the next year, it would scarcely be worthy of mention were it not for the Jamaicans' subsequent claim, that no tax had ever been levied in the island, save with the consent of the representatives of the people.<sup>6</sup> Littleton's Council was not elected; it could only be considered as representative in the sense that its members were the most notable planters.

At length, in October 1663, it was decided to call an Assembly. "For as much as the Governor and Council" so runs the entry in the minutes "have seriously debated and considered the great good and content it will be to the island, and to all the good people thereof," Lieutenant-Colonel Lynch was ordered "to cause an Assembly of thirty freeholders to be fairly chosen in the several quarters

<sup>1</sup>*Ib.* 1661-68. No. 379. <sup>2</sup>*C.S.P. Col.* 1661-8. Nos. 374, 379.

<sup>3</sup>Littleton (1629-1716) had fought in the defence of Colchester, 1648. He took part in the royalist rising in Cheshire in 1659, was imprisoned but having shortly afterwards obtained his liberty, was engaged in various secret negotiations between the King and friends in England at the time of the Restoration. *D.N.B.* pp. 367-8.

<sup>4</sup>*C.O.* 139/1. p. 21. <sup>5</sup>*C.O.* 139/1. p. 26. •

<sup>6</sup>*C.S.P. Col.* 1677-80. No. 1141. *Journals.* I. p. 27.

of the island."<sup>1</sup> Of this, the first representative Assembly of Jamaica, there are scarcely any records preserved ; a few dates of meeting and prorogation, the names of the members and a series of laws. Nevertheless, it has an importance quite apart from the fact that it was the first Assembly, for it displayed the characteristics so prominent in its later history, a lofty theory of its constitutional functions, and a determination to control the raising and spending of all money levied in the colony.

It met on January 20 1664, and sat until February 12, when it was prorogued, but it was in session again in May after the departure of Littleton.<sup>2</sup> The members, twenty in number, were elected for districts bearing the old Spanish names, the last time these appear ; the number returned for each district depended on the size of the population. Cagua, later Port Royal, had three members, St. Jago had but two, and the North side, Seven Plantations, Morant and other sparsely settled parts one each.<sup>3</sup>

The Assembly immediately asserted its power. It passed, to quote the words of the Attorney and Solicitor-General sixty years later, " a very remarkable Act " from which " it appears that it was insisted upon by the people of the island at that time that the acts and ordinances made by the Governor and Council only, were not binding laws, but void in themselves for want of the consent of the people met in Assembly,<sup>4</sup> " not only in the future, but had never been laws at all ; for it was considered necessary to insert a clause indemnifying all who had acted under their authority. This " Act for confirming divers Acts of the Governor and Council of this island, and repealing all other Acts and ordinances " enumerated a number of Acts " which are hereby declared and ordained to be in as full

<sup>1</sup>*C.S.P. Col.* 1661-8. No. 573. Lynch was Provost-Marshal, and acted as returning officer.

<sup>2</sup>*Journals.* I. p. 1. *C.S.P. Col.* 1661-8. No. 837.

<sup>3</sup>*Journals.* I. p. 1. The three members for Port Royal, William Beeston, Samuel Long and Robert Byndloss were famous in later Jamaican history.

<sup>4</sup>*C.O.* 137/14. pp. 330-42.

force as if each respective Act or ordinance . . . had been executed by the Governor and Council with the consent of the Gentlemen of this present Assembly"; and it further "enacted and ordained that all Acts . . . heretofore made by Governors and Councils only and not herein confirmed be utterly void and for ever cease."<sup>1</sup>

Henceforth, the legislative power of Governor and Council was confined to temporary ordinances or "bye-laws," and often had a proviso like that in an ordinance of 1666, "This bye-law to continue until the next Assembly, and then to be confirmed, altered, or repealed as to the wisdom of the said Assembly shall seem convenient."<sup>2</sup> As the Governor and Council said in 1674, in answer to a petition for relief from a parish levy—the levy having been ordered by an Act of General Assembly—they alone could not alter the law.<sup>3</sup> They could, however, and did, continue by proclamation laws which expired when no Assembly was sitting.<sup>4</sup>

The Revenue Acts passed by Doyley and Littleton and their Councils were not among those confirmed. The Assembly brought in and passed five money bills of its own, for it not only intended to raise new taxes and to re-organise the whole administrative system; it wished to establish its sole right to levy money within the island. The planters were greatly afraid that as Jamaica was a conquest, the King could impose whatever taxes he pleased. Specially were they afraid of some tax like the 4½ per cent. in Barbados and the Leeward Islands;<sup>5</sup> they knew that it was the declared intention of the Crown

<sup>1</sup>C.O. 139/1. pp. 41-2. <sup>2</sup>C.O. 139/1. p. 149.

<sup>3</sup>C.S.P. Col. 1669-74. No. 409.

<sup>4</sup>Sir T. Modyford after 1666; Carlisle in 1678.

<sup>5</sup>*Ib.* No. 246. Modyford wrote, September 20, 1670, "They have further buzzed in the people's ears that His Majesty as Lord of the island may impose what taxes he pleaseth on the native commodities of the Plantation before its exportation, and the rather because it was conquered at the charge of the state, and so no consent of the freeholders necessary to the same." Cf. *Ib.* Nos. 549, 743.

to impose such a tax, in this case of 5 per cent. on all exports, but that by Windsor's instructions, the island was exempt for seven years.<sup>1</sup> Hence the Assembly's haste to declare that "no further or other tax or levy or assessment whatsoever be imposed or levied upon the island or inhabitants or residents thereof, without the assent of the Governor, Council and Assembly."<sup>2</sup>

These five Acts<sup>3</sup> of 1664 deserve the epithet "remarkable," as fully as the Act for confirming the ordinances of Governor and Council. The money was not granted to the King, but raised for "the use of the public service of this Island<sup>4</sup>;" and a proportion of all penalties for breaches of the laws was appropriated to the same purpose.<sup>5</sup> The collection and disbursement of all money was in the hands of officials approved by the Assembly. The customs dues, it is true, were to be collected by a Receiver and Collector appointed by the Governor and approved by the Council only<sup>6</sup> but they were supervised by the two Treasurers appointed by the "Act for the speedy raising of a Public Treasure"<sup>7</sup> The Treasurers were indeed very important officials, for they had entire control of the financial administration of the island. As already stated, they were to act as a check on the collectors of the customs, from whom they were to receive monthly accounts, and whom they were empowered to suspend if these officers proved

<sup>1</sup>C.S.P. Col. 1661-8. No. 259.

<sup>2</sup>C.O. 139/1. p. 44.

<sup>3</sup>*Ib.* pp. 43-7. (a) An Act for the raising of a Public Revenue out of all strong liquors imported or to be imported into this island. (b) An Act for the speedy raising of a Public Treasure. (c) An additional Act for the speedy raising of Public Treasure. (d) An Act for preventing neglect and fraud in receiving customs and public money. (e) An Act for issuing money out of the Public Treasury. See below App. iii.

<sup>4</sup>*Ib.* p. 47.

<sup>5</sup>Save in the "Act for speedy raising of a Public Treasure" where a half was to be given to "His Majesty for the use of the island." *Ib.* p. 45.

<sup>6</sup>*Ib.* p. 47.

<sup>7</sup>*Ib.* p. 44. According to the "Act for preventing neglect and fraud," the Treasurers were to be appointed by the Governor and approved by the Council and Assembly. *Ib.* p. 43.

unsatisfactory.<sup>1</sup> The poll-tax, the tax on uncultivated land and the money from licenses to sell liquors were to be collected by the parish constables on receipt of a warrant from the Treasurers, and to be paid directly into their hands.<sup>2</sup> So much for the collection of the revenue. Then, the Treasurers were authorised to issue money from the public treasury for the salaries of the Governor and other officials, and for the other contingent charges as stated in the Act, which "shall be a sufficient warrant to the Treasurers for the time being to pay the above sum or sums."<sup>3</sup> They were strictly forbidden to issue any money "to any use whatsoever without the consent of the Governor, Council and Assembly,"<sup>4</sup> to whom they were responsible for a due discharge of their trust and to whom they had "to give (one in a year at least) . . . a fair written and just account upon their said oaths."<sup>5</sup>

As the result of this legislation, the position of the executive was, from the point of view of the Crown, and its representative, the Governor, intolerable. The money for the ordinary expenses of the government was not granted to the King, it was not entrusted to the executive at all, but kept by public officials appointed by the Assembly to whom with the Governor and Council they were accountable and who paid out such sums for such purposes as were authorised by law. Samuel Long, one of the Treasurers, was said to have refused to give the Governor £20 until he obtained the consent of the Assembly.<sup>6</sup> Long's action was strictly legal, but the incident well illustrates the position in which the system placed the Governor.

In addition to the strict appropriation of supplies, the appointment of the revenue officials by the Assembly differentiates these Acts of 1664 from their successors. The Assembly's right to make a detailed appropriation of the money it voted, though disputed by the Crown and

<sup>1</sup>C.O. 139/1. p. 43. <sup>2</sup>*Ib.* p. 45. <sup>3</sup>*Ib.* p. 46. <sup>4</sup>*Ib.* p. 44. <sup>5</sup>*Ib.* This would necessitate annual Assemblies. For a similar plan, cf. p. 115 *infra*.

<sup>6</sup>C.S.P. Col. 1661-8. No. 837.

lost for a time,<sup>1</sup> was admitted by the settlement of 1728,<sup>2</sup> but it never regained the power to appoint the officials who collected the ordinary revenue.<sup>3</sup> These Acts of 1664 were the expression of a theory definitely opposed to both the theory and practice prevailing in England. There, it was the King's business to carry on the government and Parliament granted him what was thought an adequate sum for this purpose, leaving its collection and disposal to the royal officials. Not until two years after this date did the House of Commons begin the practice of appropriating supply and examining the royal accounts.<sup>4</sup> The Assembly of Jamaica was in fact following not the precedent of the House of Commons, but the practice in other plantations, where freedom from English control for so great a part of their existence had inevitably resulted in the colonists considering the government their concern rather than the King's, and where, consequently, the appointment of officials was regarded as the prerogative of the local legislature.<sup>5</sup>

That these Acts of 1664 were the outcome of a deliberate policy is proved by their very completeness; and the man who led the Assembly in this policy was Samuel Long, member for Port Royal, and one of the Treasurers.<sup>6</sup> Long was now, as always, a most stubborn upholder of "the rights of Englishmen," and it is fair to say that without him the Revenue Acts passed in this

<sup>1</sup>Cf. pp. 79, 112, *infra*. There was no detailed appropriation in the Acts of 1683, 1684, and 1703.

<sup>2</sup>By the schedule or estimate of expenditure and revenue incorporated in the Act.

<sup>3</sup>With the exception of the years 1675-9, cf. *infra*, pp. 57, 75, 94, 96.

<sup>4</sup>W. A. Shaw. *Introduction to Calendar of Treasury Books*. II. pp. xi., xxxiv.-l.

<sup>5</sup>Cf. Virginia. During the Interregnum, the customs officials were appointed by and were responsible to the House of Burgesses, and the practice was continued by the Act of 1662. In 1664 the House of Burgesses appointed an Auditor whose duty it was to examine all the revenue accounts of the colony and submit his report to them. P. S. Flippin. *The Royal Government of Virginia 1624-1776*. (1919.) pp. 246-7, 263-5.

<sup>6</sup>C.O. 139/1. p. 45. *Journals*. I. p. 1



Assembly would not have been so thorough, so complete. In the Assembly of October 1664 Long was accused of having urged his fellow members not to grant this money to the King, who would divert it to his own purposes ; of persuading them to omit the words " to our Sovereign Lord the King," to establish a public treasury into which all money was to be paid, "thus endeavouring to disinherit His Majesty of his undoubted right of receiving and disposing of all public treasure."<sup>1</sup> It is true these are the charges of his enemies ; but they express so exactly his sentiments throughout his career that it is impossible to doubt they describe correctly the part he took in this Assembly of 1664. At the same time, there was a general feeling among the planters that the Assembly ought to have the sole right to tax the island ;<sup>2</sup> Long was the leader who crystallised and directed the half expressed, unformed opinions of his fellows, and put them into practical form.

The Governor and Council appear to have been in sympathy with the action of the Assembly. Littleton was a friend of Long ; so was Colonel Lynch, now one of the leading members of the Council. The Acts were sent to England for the royal confirmation without any doubts as to how they would be received.<sup>3</sup> However, they do not appear to have been considered at all ; and as it happened, every one of the Acts made by the Assembly in January-February was repealed by the Assembly in October 1664,<sup>4</sup> and the elaborate system for securing to the Assembly the control of the revenue was destroyed. But its importance is not to be measured by the brevity of its existence, for it shows that from the first the Assembly was determined that taxation was its concern, it shows that

<sup>1</sup>*C.S.P. Col.* 1661-8. Nos. 837, 838. Modyford issued a warrant for his arrest but no more is heard of the matter.

<sup>2</sup>*Ib.* 1669-74. No. 604<sub>1</sub>. Lynch wrote, August 20 1671, that the people considered it their Magna Carta not to " have anything imposed on them but by their own consents as the Barbados and the Caribbee Islands have."

<sup>3</sup>*Ib.* 1661-8. No. 812. <sup>4</sup>*C.O.* 139/1. p. 60.

in Jamaica there was no infancy, no childhood of opinion on the subject of the control of the revenue. The Assembly in 1664 went as far as, if not further than any of its successors in putting into practice the theory that the spending as well as the raising of all money for public purposes was the prerogative of the representatives of the people.

For several months, Littleton, the Deputy-Governor, had been anxious to return to England. He received no allowance as Windsor's deputy, and his expenses were heavy ; his table alone cost him £600 a year.<sup>1</sup> On May 2 1664, having apparently received news of the approaching arrival of Sir Thomas Modyford, the new Governor, he sailed for England, leaving his brother-in-law, Colonel Lynch, as President of the Council, in charge of the government.<sup>2</sup> At the beginning of June, Modyford arrived.<sup>3</sup>

Few men in the seventeenth century had a more adventurous life than Sir Thomas Modyford. Soldier in the royalist army, planter and for a short time Governor of Barbados, Governor of Jamaica in the days of Morgan and the buccaneers, he died in Jamaica one of the richest men in the island.<sup>4</sup>

Modyford had a strong will and a clear head. He did what he considered his duty, but never thought it necessary to sacrifice himself or his family for an idea ; he fought for the King—but he left England for Barbados when the royalist cause was at a low ebb. That he was a royalist did not weigh with him when he saw that resistance to the Parliamentary force besieging the island would be futile, and inevitably followed by fines

<sup>1</sup>*C.S.P. Col.* 1661-8. Nos. 531, 566.

<sup>2</sup>*C.S.P. Col.* 1661-8. No. 697, 744.

<sup>3</sup>*Ib.* No. 767. Modyford's appointment dates from January 1664. His commission and instructions were dated February 15 and 18. *Ib.* Nos. 535, 656, 664. The power to call Assemblies is in the commission, not instructions, as in the case of Windsor.

<sup>4</sup>Lucas, pp. 184-186. *D.N.B.* Modyford, p. 541-2. Harlowe, chap. II. and III. *passim*.

and forfeitures, and his commonsense acceptance of facts saved many lives and fortunes besides his own. It is only fair to say that at no time in his career did he advocate a policy which would advance his own fortunes only. For instance, his letters in 1670-71 show that in opposing the suppression of the buccaneers, he was not merely anxious to retain a lucrative source of revenue for himself but honestly thought they were indispensable to the safety and prosperity of Jamaica.

From his first arrival in the West Indies, Modyford identified himself with the interests of the English colonies, and was eager to see English power increase at the Spaniard's expense.<sup>1</sup> He had urged Cromwell to attack the Spanish dominions, and on his proposals for the conduct of an expeditionary force, the Protector based his instructions to Venables,<sup>2</sup> so that he must have come to Jamaica, the fruit as it were of his plans, with particular interest.

His seven years as Governor were prosperous years for Jamaica. The buccaneers were at the height of their reputation and power; they used Port Royal as their base and the market to which they brought their spoils. Port Royal might truly be called "the storehouse or treasury of the West Indies," into which were poured "bars and cakes of gold, wedges, and pigs of silver pistols, pieces of eight. . . . with store of wrought plate, jewels, rich pearl necklaces and. . . . of pearls unsorted and undrilled several bushels. . . ."<sup>3</sup>

It is true that Modyford had come with orders to suppress the buccaneers, but force of circumstances convinced him of their value to the colony, and compelled the English Government to encourage them. In the Dutch

<sup>1</sup>J. Godbury, in the dedication to *The West India*—a Jamaica Almanac (1674), calls Modyford "that grand propagator of English honour and power in the West Indies."

<sup>2</sup>*Voyages of Captain William Jackson*. Intro. p. xxi.

<sup>3</sup>F. Hanson. *Account of the Island and Government of Jamaica, written in the year 1682* (bound with the printed collection of laws), St. Jago de la Vega. 1793.

war of 1665, they were a useful defensive and offensive force—under the leadership of the Lieutenant-Governor, Colonel Edward Morgan<sup>1</sup> they captured Eustatius and Saba—and they could not easily be suppressed afterwards.<sup>2</sup> Modyford had not lost his eagerness to increase English power at the expense of the Spaniards, and had no great wish to suppress those who at the same time weakened the Spaniards and enriched Jamaica. There was too, always a possibility of a Spanish invasion to recover the island ; under cloak of this possibility Henry Morgan sacked Panama and other, less famous, captains preyed on Spanish shipping. The chief interest of the colonists was buccaneering, not planting, and the merchants of Port Royal and owners of the large plantations enjoyed a period of hectic prosperity. But the island as a whole did not gain ; little progress was made in settling the outlying parts or in developing the plantations. While Port Royal was humming with life, its streets crowded with men with money to spend, and its harbour filled with ships of all sorts, merchantmen from England and North America, buccaneering craft of all sizes and kinds, the small plantations of ten, twenty and thirty acres were ruined, while their owners “ must come down some twenty, some thirty miles to keep a guard.” Long periods of martial law took the small planter and his few white servants away from their work for months at a time, and servants and slaves ran away to join the buccaneers. Martial law “ was the first destruction of small settlements, who for the most part consisted only of Christians . . . for by the ill-husbanding of some in their extraordinary and lavish expense in strong liquors (coming where they were, which at home they neither had nor the occasion), and by their long . . . absence from their habitations, their business altogether neglected, many run themselves

<sup>1</sup>Said to be an uncle of Henry Morgan. *D.N.B.* Henry Morgan, p. 914. *C.S.P. Col.* 1660-8. No. 1085.

<sup>2</sup>Haring, pp. 129-130.

so far into debt and their plantations become ruined and out of order, that many are forced to sell to their lords and masters.....or else run from them and leave all."<sup>1</sup>

These conditions had their political effect ; when the majority of the people were so busy growing rich, they had not time to worry about politics and laws and assemblies. "Privateering," as Littleton said "let out the many ill-humours, and those that remained were in ways of thriving, and by that made peaceable."<sup>2</sup> This explains why Modyford had but one Assembly during his Governorship, and yet remained popular with all classes.

The Assembly met in October 1664, was prorogued for a year early in March 1665, and dissolved by proclamation the following October.<sup>3</sup> It had a stormy session ; "business," said Beeston, one of its members, "went on, but like bells rung by boys all jarring and every day caused more ill-blood."<sup>4</sup> Few of its members had sat in the earlier Assembly, and its Speaker, Sir Thomas Whetstone, was a buccaneering captain, "a malicious, beggarly debauched fellow," who held this office "more by the desire or rather order of the General (*i.e.* Modyford) than by the election of the gentlemen."<sup>5</sup> It began by attacking Samuel Long for his conduct in the last Assembly ; then declared all the Acts of that Assembly null and void, on the grounds that the writs by which it was summoned were illegal, and that the laws had not been signed by Littleton.<sup>6</sup>

<sup>1</sup>*C.S.P. Col.* 1669-74. No. 7. The writer, one Style, a fellow student of Arlington's at Christ Church, Oxford, was a rather discontented planter who disliked Modyford and hated the men of the old army who, he said, governed the Governor. But his statements as to the decay of old, and the lack of new, plantations are borne out by the condition of the island when Lynch became Governor in 1671. *Ib.* Nos. 8, 138, 640, 697.

<sup>2</sup>*Ib.* 1661-8. No. 812.

<sup>3</sup>*Ib.* Nos. 826, 962, 1063.

<sup>4</sup>"Beeston's Diary," printed in *Interesting Tracts*, p. 283.

<sup>5</sup>Col. T. Lynch to Secretary Bennett. February 12, 1665. *C.S.P. Col.* 1661-8. No. 934. "Beeston's Diary," p. 282. Both Lynch and Beeston were friends of Long, which may have affected their opinion of his successor, Whetstone.

<sup>6</sup>*Ib.*, Nos. 837, 882.

It re-enacted, but with several important changes, the Revenue Acts of its predecessor. The revenue was granted to the King "his heirs and successors for the public use of this island," all money was to be paid to "the Receiver of His Majesty's public revenue," who was appointed by the Governor. The Receiver kept the money "in readiness to be issued forth under the Governor's hand according to the several uses and intents in this Act hereafter mentioned," then followed the clause detailing the sums to be paid in salaries to the Governor and other officers.<sup>1</sup> The administration of the revenue was thus transferred from the officials of the Assembly, the Treasurers, to the Governor.<sup>2</sup>

The only other Act of importance, that "declaring the laws of England in force in this Island,"<sup>3</sup> was the precursor of many with the same title and the same object, namely to put on a statutory basis the right of the people of Jamaica to the privileges of English common and statute law. Up to this time, they had relied on Windsor's proclamation, but now the Assembly enacted that "all laws and statutes" except those levying subsidies, "heretofore made in our native country, the Kingdom of England, and all the liberties, privileges immunities and freedoms contained therein have always been of force and are belonging to His Majesty's liege people within this Island as their birthright, and that the same ever were, now are, and ever shall be deemed good and effectual in the law."

<sup>1</sup>C.O. 139/1. pp. 70-2. *C.S.P. Col.* 1669-74. No. 604.

<sup>2</sup>The accounts, however were to be open to the inspection of any of the Council or Assembly.

<sup>3</sup>C.O. 139/1. p. 65. Modyford explained that the Act was passed because "finding our own weakness in that work (*i.e.* law-making) we resolved and passed the like law Sir Edward Poynings made on the like occasion in Ireland, thereby making us partakers of the perfectly incomparable law of our own country." C.O. 1/22. No. 46.

Cf. Hallam. *Constitutional History of England* (1850). Vol. II., p. 522.

In thus stating their right to the laws of England, the planters of Jamaica were actuated more by a desire to safeguard themselves against arbitrary actions by the Crown than to introduce into the island the whole body of English common and statute law.<sup>1</sup> They knew—and so did the English Government, but in regard to the colonies, it learnt it late—that the laws of England put many limitations on administrative action, and were the best guarantee of their own freedom. The great reverence shown by the colonies for the laws of England was of slow growth, and the result not so much of admiration for the processes of the laws, as of a feeling that they were the best protection against arbitrary power; the laws of England had defeated the King before, they could do it again. Whenever a colony feared that its liberties were in danger or its charter threatened, whenever it felt oppressed by a royal governor, it turned to the laws of England for protection. Circumstances made Jamaica one of the first to realise the value of these laws, because the people feared that as settlers in a conquered country they could have few rights as against the Crown. Their contemporaries in the mainland colonies did not want the laws of England, they were making their own, and satisfied with their work; but at the end of Charles II.'s reign, when the Crown attacked their independence, and all through the next century they began to discover how useful and necessary it was to claim English law as their

<sup>1</sup>It was quite impossible for the colonists to use the precedents and procedure of the courts of England, because they had as yet no trained lawyers and did not encourage them when they began to come out. The judges of the precinct courts, the Justices of the Peace who held the quarter sessions, as well as the judges of the Supreme Court at St. Jago, were planters. Some of them may, like Samuel Long, have had some knowledge of the law, but others were like Lt.-Colonel Cope, "who knows not one letter in the book, yet of late, hath learnt to write his name," or Captain Oldfield, "a man condemned to be hanged in England." The names of the English processes might be used, but the justice administered by these planter judges must have been a rough and ready kind of equity. When his knowledge of the principles and practice of English law failed, the judge used his discretion. *C.S.P. Col.* 1669-74. Nos. 8, 704, 604.

birthright.<sup>1</sup> The cry, "no taxation without representation" was the final and most famous use of this weapon, the laws of England.

Modyford sent the laws, twenty-seven in all,<sup>2</sup> to Clarendon to be submitted to the Crown for confirmation, but nothing was ever heard of them.<sup>3</sup> Clarendon was too busy to remember them, the Council for Foreign Plantations was languishing if not already extinct,<sup>4</sup> the country was in the midst of the Dutch war, which took up all the attention of the Government. It is, therefore, not surprising when the only authority to deal with colonial business was a Committee of the Privy Council—and at such a time all members of the Privy Council would feel there was work of more pressing importance than the examination of colonial laws—that Modyford heard no more of the laws he had sent. When they expired in two years' time, he and the Council continued them by proclamation from year to year,<sup>5</sup> apparently with the complete approval of the people, who felt that after all the laws had originally been made by their representatives, and in any case they were too busy to trouble themselves about their legality.<sup>6</sup>

It was said that Modyford and his family monopolized the government. "He would have none to shine in this hemisphere but himself and his son,"<sup>7</sup> said Lynch, and with a great deal of truth. One son, Thomas, was Major-General of the island,<sup>8</sup> another, Charles, acted as agent

<sup>1</sup>P. S. Reinsch. *English Common Law in the early American Colonies*, pp. 57-58.

<sup>2</sup>C.S.P. Col. 1661-8. No. 882.

<sup>3</sup>*Ib.* 1669-74. No. 704. Modyford said they were approved but not returned to him. There is no record of their confirmation.

<sup>4</sup>Andrews. *British Committees*, p. 75-6.

<sup>5</sup>C.S.P. Col. 1677-80. No. 1234.

<sup>6</sup>There were naturally exceptions—Style was an example. He refused to pay the parish levy because the Act under which it was collected had expired. C.O. 1/23. p. 22.

<sup>7</sup>C.S.P. Col. 1661-8. No. 934.

<sup>8</sup>*Ib.* No. 1058.



in London ;<sup>1</sup> his brother, Sir James, having lost the office of Governor of Providence by the recapture of that island by the Spaniards in 1666, succeeded Colonel Edward Morgan as Deputy Governor with a salary of £600 a year. He also was for a time Chief Judge of the Court of Admiralty and Collector of Customs.<sup>2</sup> It was further said that Modyford was the most powerful Governor Jamaica ever had ;<sup>3</sup> circumstances conspired to make him so. He had no Assembly to hamper him, and after the first year he rarely called a Council ;<sup>4</sup> the need for defence made it possible to declare martial law for long periods when no one dare complain. He was popular with the planters because they felt he was one of themselves ; he and his family had a large plantation, stocked with cattle, and introduced and cultivated various kinds of fruit trees.<sup>5</sup> He was popular with the men of the old army because he was " of my Lord General's recommendation ; "<sup>6</sup> he was immensely popular with the people of Port Royal, because he favoured the buccaneers.<sup>7</sup> In England, he had in Albemarle, whose kinsman he was,<sup>8</sup> and to whom he owed his appointment as Governor, a powerful patron. Such a patron was all the more valuable because at the time there was no efficient system for dealing with colonial business. The Council for Foreign Plantations faded out of existence

<sup>1</sup>This was not an official position ; there were not as yet official agents representing the colony as such but every governor had someone in England to look after his private interests. L. M. Penson. *The Colonial Agents of the British West Indies*. (1924). pp. 71-76.

<sup>2</sup>*C.S.P. Col.* 1661-8. Nos. 1559, 1689, 1702. *Ib.* 1669-74. Nos. 293, 704. Haring, pp. 139/140.

<sup>3</sup>*C.S.P. Col.* 1667-80. No. 1234.

<sup>4</sup>The recorded meetings of Council for these years are :—1664, June 4-25, July 28, August 19-22, October 11-28 ; 1665 and 1670, 5 meetings ; 1666 and 1667, 3 meetings ; 1668, 4 meetings.

<sup>5</sup>*C.S.P. Col.* 1661-8. No. 827. *Ib.* 1668-74. No. 270. His son Thomas had six thousand acres in St. Katherine's Parish and his brother held over four thousand in three parishes—cf. Godbury—*Almanac*. 1674.

<sup>6</sup>*C.S.P. Col.* 1661-8. No. 744. <sup>7</sup>*Ib.* 1669-74. Nos. 293, 331.

<sup>8</sup>*Ib.* 1661-8. Nos. 6, 549.

in 1665 ; the Committee of the Privy Council for the Plantations, even after the reorganisation of 1668, was inactive ; colonial affairs were part of the Secretary's work,<sup>1</sup> and when the Secretary chiefly concerned was Arlington, who was not much interested in the colonies, except when the exploits of the buccaneers caused him trouble with Spain, the Governors were left very much to themselves. Modyford did very much as he chose in the internal affairs of Jamaica. He was supposed to communicate officially with Arlington and to receive orders through him, but he wrote quite as frequently and as fully to Albemarle, being particularly careful to explain fully the reasons for his actions to "our Duke,"<sup>2</sup> on whose support he relied when Jamaica was discussed at the Council Board. He received permission from the King, through Albemarle, to follow a policy quite contrary to that indicated by Arlington, and without Arlington's knowledge.<sup>3</sup>

But in 1670, conditions were changing. Albemarle died at the beginning of the year.<sup>4</sup> In July, England and Spain signed the Treaty of Madrid "for composing differences, and restraining depredations and establishing peace" between their respective colonies in America.<sup>5</sup> This meant that England must enforce what had been her official policy for some time, the suppression of the buccaneers. Modyford, under whose protection they had flourished, was naturally detested by the Spaniards, and was no favourite of Arlington. In answer to the

<sup>1</sup>For the part played by the Secretary of State in colonial administration, see F. M. G. Higham, *The Principal Secretary of State*. (1923.) pp. 315-20.

<sup>2</sup>*C.S.P. Col.* 1661-8. Nos. 785, 1263. For example, in 1666 he wrote four times to Albemarle and four times to Arlington ; in 1667 three times to Albemarle, four times to Arlington ; in 1668, four times to Albemarle, twice to the Lord Keeper.

<sup>3</sup>*C.O.* 1/21. p. 12. *Ib.* 1/24. p. 155.

<sup>4</sup>E. F. Ward. *Christopher Monk, Duke of Albemarle*. (1914.) pp. 29-30.

<sup>5</sup>*S.P. Spain*. Vol. 57. f. 76, cited in Haring, p. 197. *C.S.P. Col.* 1669-74. No. 334.

repeated Spanish demands,<sup>1</sup> the King promised his recall, and in January 1671 revoked his commission, sending orders with Lynch, his successor, to send him a prisoner to England.<sup>2</sup>

<sup>1</sup>Haring, p. 197.

<sup>2</sup>*C.S.P. Col.* 1669-74. Nos. 377, 405, 424.

## CHAPTER III.

### THE DEVELOPMENT OF THE ASSEMBLY. 1671-1677.

The arrival of Lynch as Lieutenant-Governor in June 1671 marks the end of a period in the history of Jamaica. Up to this time, Jamaica had been peculiar among the English West Indian plantations, not merely in the manner of its acquisition, but in the trend of its interests. It did not concern itself overmuch with trade and the growing of sugar, tobacco and cotton; buccaneering absorbed its energies and overshadowed everything else. Letters to England were filled with tales of raids and prizes, of money pouring into Port Royal, of the wealth in men and ships in the harbour, all the work of the buccaneers. The Governor in Jamaica and the government in England were alike preoccupied with the problems caused by them. But after 1671 the English Government, having at last made up its mind to suppress the buccaneers, kept consistently to its policy of withholding all official countenance; and the buccaneers, thus losing their cloak of respectability, degenerated into pirates and outlaws, as ready to plague Jamaica as the Spaniards. The island now suffered in some measure what it had so cheerfully inflicted on its enemies, and felt the plundering of its former friends all the more seriously as it became like the other West Indian islands, a planting colony anxious for good harvests and peaceful trade.

(In its constitutional history, 1671 is even more important; for with Lynch's tenure of the governorship begins what may be called the Parliamentary history of Jamaica. During the ten years previous, there had been but two short sessions of Assembly; after 1671, it was unusual for more than two years to elapse between sessions. (It is, moreover, during the next decade that the Assembly of Jamaica gained privileges like those of the English House of Commons, on which it consciously modelled itself. Then having secured a position

of equality with the other two parts of the legislature, the Governor and Council, not only in legislation—a long acknowledged claim—but in the control of its members, the ordering of its business and the appointment of its officials, it proceeded to use the legislative powers granted by the prerogative to cut down the powers granted by the same prerogative to the Governor, in short to attack the prerogative itself. These seven years 1671-1677 form the prelude to the three years' struggle for the very existence of the Assembly; in Jamaica the planters are growing more aggressive, as in England, the Crown, through the Lords of Trade, is making royal control something of a reality.]

[From the first, the Assembly was considered, and considered itself as the equivalent in Jamaica of the House of Commons in England, and that being so, it ought to have in Jamaica similar power and privileges. In 1664, it had successfully asserted its rights in legislation and in the control of public money; but as a group of men met for the first or second time, without experience in public affairs, and unaccustomed to working together, it was inevitably subject to the control of the Governor and Council in ways which no self-respecting representative Assembly could tolerate for any length of time.

His commission authorised the Governor, with the advice and consent of the Council, to summon, prorogue and dissolve the Assembly; further he was given "full power and authority" with the Council's consent, "to establish and frame such a way and manner as shall be thought fit for the calling of General Assemblies of freeholders and planters,"<sup>1</sup> [that is to say that it lay with the Governor and Council to decide when an Assembly should be called, how long it should sit, how many members it should have, and how the seats should be allotted among the districts and parishes.] However formal these phrases became as the colonies grew older and built up a polity founded upon laws of their own

<sup>1</sup>C.S.P. Col. 1661-8. No. 656. *Ib.* 1669-74. Nos. 1251, 1258.

making, in Jamaica, in these early days, they describe the facts of the position. [Not only did the Governor, with the advice of the Council, summon and dissolve Assemblies, but he decided upon the size and composition of the House. Littleton and his Council at first thought of summoning thirty representatives to the Assembly to meet in January 1664, but considering that number too large, finally issued writs for twenty only, and allotted seats to the districts in proportion to the size of their respective populations.<sup>1</sup> Modyford, in October 1664, summoned an Assembly of eighteen members, two from each of the nine parishes established by the earlier Assembly.<sup>2</sup> In his "Present State of the Government of Jamaica,"<sup>3</sup> which he sent to the Council of Trade and Foreign Plantations in 1671, Lynch explained that the Assembly of the island consisted of eighteen members "chosen indifferently" by the people, but when he issued writs for the Assembly to meet in February 1672, he gave a third member to the parish of St. Katherine's, in which St. Jago lay.<sup>4</sup> Two years later, the number of parishes having been increased by an Act of 1672, he re-arranged the distribution of seats, but left the total number unchanged.<sup>5</sup> But the Assembly of 1674 was dissatisfied with this state of affairs; nineteen members, it said, were too few, and it requested Lynch to issue writs at once to increase its numbers by summoning three representatives from Port Royal and St. Katherine's, and two from each of the thirteen other parishes irrespective of their size or population. Lynch refused; it would delay public business. He suggested—and his suggestion was adopted—that the Assembly should introduce a Bill, to which he and the Council would consent, for ascertaining the number of Assembly-

<sup>1</sup>*C.S.P. Col.* 1661-8. Nos. 573, 580. *Journals*. I. p. 1. <sup>2</sup>*C.S.P. Col.* 1661-8. No. 826. <sup>3</sup>*Id.* 1669-74. No. 604.

<sup>4</sup>*Id.* No. 662. In 1673, in the very short Assembly of 10 to 16 May, there were only seventeen members, none being returned for St. John's parish. *Id.* No. 1089. <sup>5</sup>*Id.* No. 1223.

men.<sup>1</sup> The Act fixed the number at thirty-two, and as it was renewed from time to time, the Governor and Council no longer had the power to increase or decrease at pleasure the numbers of the lower house.

The case of Humphrey Freeman in 1672, suggests that even had the composition of the Assembly not been fixed by law, the Governor and Council would not have long enjoyed the freedom to alter at will the distribution or number of seats. Freeman, one of the three members elected for the parish of St. Katherine's, was excluded from the Assembly by Lynch for speaking slanderously of the government, and Lynch refused the House's petition that he might be admitted on submission, nor would he issue a writ for a new election. St. Katherine's, he said, could be represented as formerly by two members only. However, he finally yielded when the people of St. Jago, in St. Katherine's parish, petitioned that "to save their privilege," either Freeman might be allowed to take his seat or that they might elect someone else.<sup>2</sup>

When the Assembly met, its first business was to choose a Speaker. Previous to 1675, the Speakers were the nominees of the Governor; Whetsone, Speaker in October 1664, was, if Lynch is to be believed, practically forced on the House by Modyford.<sup>3</sup> Samuel Long, Speaker of the three Assemblies in 1672, 1673, 1674, was elected on Lynch's nomination.<sup>4</sup>

On one occasion Long fell ill. The Assembly came in a body to the Governor to ask him to nominate someone else. Lynch suggested Major John Colebeck, and the

<sup>1</sup>*Id.* No. 1223, 1224.

<sup>2</sup>*C.S.P. Col.* Nos. 726, 747, 817.

<sup>3</sup>*Cf. supra* p. 32. There is no record of how the Speaker, Robert Freeman, of Littleton's Assembly in January 1664, was chosen. After the prorogation from February to May 1664, Long "caused himself to be elected" Speaker. *C.S.P. Col.* 1661-8. No. 837.

<sup>4</sup>*C.S.P. Col.* 1669-74. Nos. 747, 1089, 1223, 1224. In the Journals of the Assembly, which first appear in February 1674, Long is said to be chosen on the "recommendation" of the Governor, while in the Council Minutes he is "nominated."

House immediately elected him, sending hearty thanks to the Governor for recommending so able and fit a person.<sup>1</sup> After 1675, the formula "on the nomination of the Governor" is not found. Samuel Long was again Speaker in 1675, elected by the House and presented to the Governor for his approval.<sup>2</sup> Henceforth, free election was the rule, though Carlisle in 1678 tried to save the Governor's right, which, he said, Vaughan had allowed to lapse, by nominating the man he knew the Assembly intended to choose.<sup>3</sup> The Clerk of the Assembly seems from the first to have been freely elected by the House. Carlisle aroused very bitter feeling, when in 1679, he insisted upon appointing the Clerk, as the King did in England.<sup>4</sup>

All members of the Assembly had to take the oath of allegiance, and after 1673, the oath of supremacy, before the Council, or a Committee of Council appointed for the purpose of administering the oaths;<sup>5</sup> those who were not present on the first day had always to be sent to the Council to take the oaths before they could take their seats.<sup>6</sup> This procedure the Assembly considered derogatory of its dignity, and in 1677 it attempted to extort from Vaughan the right to appoint a committee of its own members for the purpose, but Vaughan firmly refused.<sup>7</sup> So long as its members had to go before a body

<sup>1</sup>*C.S.P. Col.* 1669-74. No. 761.

<sup>2</sup>*Ib.* 1675-76. Nos. 536, 537.

<sup>3</sup>*Ib.* 1677-80. No. 794. "and I the rather proposed him (who they had a mind to choose) to gain the point quietly of recommending, which my Lord Vaughan, I am told, neglected to do."

<sup>4</sup>*Ib.* 1661-8. No. 837. 1677-80 No. 174. *Journals*. I. p. 47.

<sup>5</sup>*Ib.* 1669-74. Nos. 747, 1089, 1206, 1223. It was invariably the Council or a small committee of it that administered the oaths, but the place where the oaths should be taken was not settled. It might be the Council room; in 1674 and 1675, the Council committee went to the Assembly. *Ib.* No. 1223. *Ib.* 1675-76. No. 536. After 1677, the Assemblymen had to come to the Council. *Ib.* 1677-80. Nos. 174, 398.

<sup>6</sup>*C.S.P. Col.* 1669-74. Nos. 747, 1223. *Ib.* 1677-80. Nos. 174, 398, 402. <sup>7</sup>*Ib.* 1677-80. No. 402.



beyond its control, so long the Assembly felt, it was not master in its own house, for the decision as to whether a member could or could not take his seat seemed to lie in the hands of the Governor and Council. This was merely a matter of appearance, because the oaths had to be taken. If the elected candidate was willing to take them, he could not be excluded—unless for some very serious cause; if he refused, he was *ipso facto* excluded, whether he refused before the Governor and Council, or before the Assembly. But to a body as sensitive as the Assembly of Jamaica on the subject of its privileges the mere form of having any man elected to sit as one of its members refused admittance not by its orders, but by the Council was a perpetual source of annoyance.<sup>1</sup>

When the Speaker first followed the example of his English prototype and demanded the privileges of free speech, free access, freedom from arrest it is impossible to say. As Long was the Speaker, it would be fairly safe to conclude that he asked for them in 1672. The first occasion recorded in the Journals is the opening of the Assembly in 1677.<sup>2</sup>

After taking the oaths, the Speaker and the members returned to their own House.<sup>3</sup> After 1675, when the Journals begin to be fuller, it is at once evident how anxious the Assembly was to follow the procedure of the House of Commons, both in the management of its own business and in its relation with the Council.

<sup>1</sup>The question where the oaths should be taken caused a violent quarrel between Governor and Council and Assembly in 1726. The Assembly claimed that the Council committee must come to the House to administer the oaths; the Governor and Council retorted that this was contrary to all precedent. However, at the opening of the next session, they yielded, and henceforth, the Assemblymen were sworn in their own house. *Journals*. II. pp. 581-4, 600.

<sup>2</sup>*Journals*. I. p. 11.

<sup>3</sup>Previous to 1677, the Speaker was chosen by the Assembly before the members had taken the oaths. After that date, they came to the Council to take the oaths; then returned to their House, chose the Speaker and presented him for the Governor's approval. *C.S.P. Col.* 1669-74. Nos. 747, 1089, 1223. *Ib.* 1677-80. Nos. 169, 398.

In 1675, the rules for the orderly managing of debates are first entered.<sup>1</sup> In 1677, at the opening of the session in April, a committee was appointed to inquire "what was the custom in England in the lodging of Acts and concerning Grand Committees, or anything else necessary for the House to know"<sup>2</sup>; a few weeks later, another committee was appointed "to wait on the Council to be informed of the practice of the Parliament in England in reference to the amendments to Acts."<sup>3</sup> In 1672, a committee of the Council met a committee of the Assembly to work out an agreement on the Council's revenue proposals,<sup>4</sup> and in the same session, as the Assembly refused to see the necessity of fortifying Port Royal, the two Houses met in free conference.<sup>5</sup>

The Assembly's desire to be "the figure" of the House of Commons was strong enough to make it surrender island customs when assured that they were not in conformity with English practice. Lynch, having had no parliamentary experience in England, could not help the Assembly much, but his successor, Lord Vaughan, was able to give it some valuable lessons; and he was willing to do so because he considered the Assembly ought to be a miniature House of Commons.<sup>6</sup>

It had been the custom for the Governor to sign the bills presented to him, in the presence of the Council and Assembly.<sup>7</sup> Vaughan was requested, in 1675, to sign the bills in the Assembly, but refused; he intended to guide himself according to the usage of the Parliament in England, and the Assembly could not be witness to anything he did by virtue of his prerogative. The bills must be brought to him, and when he had decided which he would accept, the Assembly should be called in and

<sup>1</sup>*Ib.* 1675-76. No. 537. <sup>2</sup>*Ib.* 1677-80. No. 174. <sup>3</sup>*Ib.* No. 209. <sup>4</sup>*Ib.* 1669-74. No. 747. <sup>5</sup>*Ib.* No. 817.

<sup>6</sup>Vaughan to Geo. Legge. *H. MSS. Com. 11th Report*, App. p. 170. From Vaughan's conduct it is clear he considered the Governor, Council and Assembly the local counterparts of King, Lords and Commons. Cf. his defence of the Assembly's rights against Martin, p. 67 *infra*.

<sup>7</sup>*C.S.P. Cal.* 1669-74. No. 1232. *Ib.* 1675-6. Nos. 537, 554.

informed. When the Assembly heard this, it ordered the Speaker to take the bills to the Governor, but if he would not sign them in its presence, to bring them all back. Vaughan immediately pointed out that such a course was "altogether repugnant to the custom of the Parliament of England," and then "being pressed" by the Speaker how an Act beneficial to the Governor should be stopped till other Acts conducing to the advantage of the subject were passed, his Lordship replied that such Acts for the subject should be sent to him and assented to before the House passed the others."

The Assembly yielded, withdrew with the Speaker while Vaughan signed the bills, and then came back to hear that he had done so.<sup>1</sup> Perhaps at the time, the Assembly-men felt rather ruffled at the Governor's conduct, but one imagines that when they came to think over what he had told them they were not ill-pleased. The procedure was parliamentary, and they would not forget the method of which Vaughan had told them. of forcing their bills through.

Another question of the same kind came up in 1677. On April 19, the Governor returned four bills to the Assembly because they had been read twice only. The House after debate "unanimously stood to their former vote and think not fit to recede from it," for "it hath hitherto been the custom to read Acts twice and send them to the Council."<sup>2</sup> Vaughan and the Council requested the Assembly to meet them in a free conference. The Assembly consented ; but before it went, it carefully arranged that the Speaker alone should discourse the sense of the House, and "should speak to no other matter but the Acts being sent to the Council when twice read." As a result of the conference, and Vaughan's explanation that to read Acts twice was unparliamentary, the House rescinded its vote.<sup>3</sup>

<sup>1</sup>*C.S.P. Col.* 1675-76. Nos. 537, 554.

<sup>2</sup>*Ib.* 1677-80. No. 174. The House had a short memory. Among the rules it drew up in 1675 for ordering its business was one that all Acts should be read three times. *Ib.* 1675-76. No. 537.

<sup>3</sup>*Ib.* Nos. 169, 174.

The Assembly was summoned by writs in the King's name, issued to the Provost-Marshal. He made the returns to the Governor and Council ; and the names of the men elected were entered in the Council Minutes.<sup>1</sup> As early as 1672, the Assembly seems to have scrutinized the returns ; at the opening of the session, because it had found the election of Freeman unfair, a writ for a new election in the parish of St. Katherine's was granted.<sup>2</sup> In 1675, the Assembly appointed five of its members to join with five of the Council in examining the returns.<sup>3</sup> Two years later, the Assembly appointed a committee of its own members only, and not satisfied with the list of Assemblymen returned by the Council demanded to see the original writs with the attestations.<sup>4</sup>

The Assembly, like the House of Commons in England, claimed jurisdiction over its members, and over all who infringed its privileges ; but it is not until after 1675 that it can be said to have exercised its powers fully.

In the Assembly of October 1664 it committed to prison William Beeston, a member for Port Royal, for non-attendance.<sup>5</sup> Ten years later, in the session of 1674, it fined five members for a similar offence and imprisoned one Captain Brayne for refusing to act as Assemblyman.<sup>6</sup> Yet a few weeks later it applied to the Governor and Council for the punishment of a Captain Knapman who had spoken slanderous words reflecting on the honour of the House.<sup>7</sup> The rules of procedure adopted by the Assembly in 1675, gave the Speaker power, on the vote of

<sup>1</sup>*Ib.* 1669-74. Nos. 726, 1089, 1223. *Ib.* 1675-76. No. 536. The election writs for the Assemblies of October 1664 and 1672 are printed in the Journals. I. pp. 2, 4. From the first of these, it appears that the Provost-Marshal did not act as returning officer in the election for the October Assembly of 1664.

<sup>2</sup>*C.S.P. Col.* 1669-74. No. 747. <sup>3</sup>*Ib.* 1675-76. No. 537. <sup>4</sup>*Ib.* 1677-80. No. 174. <sup>5</sup>"Beeston's Diary," *Interesting Tracts*, p. 283. <sup>6</sup>*C.S.P. Col.* 1669-74. No. 1224.

<sup>7</sup>*Ib.* No. 1274. Knapman suggested that the members passed laws to ease their own purses, and lay burdens on him and people like him.

the House, to fine and imprison any member for disobedience, blasphemy and drunkenness.<sup>1</sup> By 1677, the Assembly had assumed full power to defend itself; it imprisoned, fined and expelled from the House Thomas Martin for a breach of its privileges and denial of its rights, and at the same time committed his attorney for a breach of privilege in acting for Martin.<sup>2</sup>

By 1675, the Assembly may be said to have established its independence of the Governor and Council in its internal affairs, and it had obtained the privileges without which no representative Assembly could act effectively.<sup>3</sup> It was then ready to open its attack on the prerogative. The rapidity with which after 1671, the Assembly achieved a position of equality with the Governor and Council, was due to the frequent sessions, the re-election of the same men year after year, and the influence of Samuel Long. No progress could be made in building up precedents, no experience in dealing with public affairs could be obtained until the Assembly met with some regularity. Between 1671 and 1677, the Assembly was summoned six times.<sup>4</sup> It is true the sessions were not long,<sup>5</sup> but with many of the same men sitting and working together, session after session, and with Samuel Long as Speaker four times in succession, the shortness of the session was not so great a hindrance as it otherwise would have been to the development of a corporate sentiment in the House. For instance in the Assembly of 1675, twenty of the thirty-two members had sat, some once, some twice or oftener in previous Assemblies<sup>6</sup>; in April, 1677, half the Assembly were old stagers.<sup>7</sup>

<sup>1</sup>*Ib.* 1675-76. No. 537.

<sup>2</sup>*Ib.* 1677-80. Nos. 209, 286, cf. *infra*. pp. 65-67.

<sup>3</sup>Long. I. p. 56.

<sup>4</sup>In 1672, 1673, 1674, 1675. Two Assemblies in 1677.

<sup>5</sup>In 1672, 1674 and 1675, about three weeks; in 1673, the Assembly met on May 10, and was dissolved on May 16.

<sup>6</sup>*C.S.P. Col.* 1669-74. Nos. 726, 1089, 1223. *Ib.* 1675-6. No. 536.

<sup>7</sup>*Ib.* 1677-80. No. 169.

Samuel Long,<sup>1</sup> has already been mentioned in connection with the meeting of the first Assembly in Jamaica<sup>2</sup> and the measures which were taken to secure the complete control of public money to the representative House. He has always been famous in the history of Jamaica for the part he took in resisting the proposed "new frame" of government in 1678. This was no new rôle. From his first appearance in public life, he stands out as a man of strong opinions inimical to the power of the Crown, ready to seize the first possible opportunity to limit the prerogative and extend the powers of the Assembly, and always working for that purpose, whether as Speaker or Clerk of the Assembly, or member of the Council. For Long was first and always true to the traditions of the Parliament-men of 1641; he would like to have seen the Assembly of Jamaica play the part of the House of Commons in the Parliament of 1641. Since the Assembly could not appoint the executive, it must be content with the second best, limit its power so that, though it could not be altered or removed, its sphere of independent action would be too small to be important. Hence he urged the necessity of keeping all public money under the Assembly's control, of passing acts to declare that all those laws of England which limited the power of the prerogative were in force in Jamaica, and of limiting the Governor's military power.<sup>3</sup> In short, Long wished to do for the Jamaica Assembly in the seventeenth century what the Continental colonists so successfully achieved in the eighteenth century; to

<sup>1</sup>Long (1638-83) came out with Dooley's regiment in 1655. By 1670, he had a large estate in the parish of Clarendon, and was one of the judges of the precinct of which Clarendon formed a part. In 1674, he was sworn a member of the Council and appointed Chief Justice. He was not one of those named Councillors in Vaughan's commission, but in 1676, was, on the Governor's recommendation, re-appointed by the Crown. *C.S.P. Col.* 1669-74. Nos. 270, 604, 1342. *Ib.* 1675-76. Nos. 853, 998. *D.N.B.* Long, pp. 109-110.

<sup>2</sup>*Supra*, pp. 26-28. •

<sup>3</sup>*C.S.P. Col.* 1661-8. No. 837. *Ib.* 1677-80 No. 270

make it supreme in the colony, powerful enough to over-ride the orders of the English government, and the rights of the Governor and Council.<sup>1</sup> Others in Jamaica shared, in greater or less degree, Long's opinions, but Long was always the leader ; in 1664, he inspired the Revenue Acts of the Assembly ; in 1675, he had a share in altering the Revenue Act to the disadvantage of the Crown and in erasing the King's name from it ; in 1677, he organised the opposition of Council and Assembly to the insertion of any clause in the Bill of Privileges or Militia Act to save the Governor's powers under his commission,<sup>2</sup> and in 1678, resisted the attempt to destroy the Assembly's legislative freedom.<sup>3</sup> He died at the age of forty-five ; and his extreme youth when he first appears in Jamaican politics—he was just twenty-six in 1664—makes the great influence he obtained over his fellow-planters all the more remarkable a proof of his forceful character. He was a man of great determination and courage, with some knowledge of the law,<sup>4</sup> and considerable political skill. As his enemies cannot accuse him of seeking his own advantage, he must have been incorruptible. Scarcely another public man in Jamaica escaped personal calumny. He was more obstinate than the traditional mule. He would listen to no arguments, hear no reasons, see nothing that he did not choose to see ; in his own words " he asked nor desired nothing but his rights and privileges as an Englishman, and that he ought to have and would not be contented with less."<sup>5</sup> From that position he would not move.

<sup>1</sup>" The rendering governors and all other officers entirely dependent on the people is the general inclination and endeavour of all the plantations in America." Governor Lewis Morris quoted in E. B. Greene, *The Provincial Governor* 1898, p. 174.

<sup>2</sup>*C.S.P. Col.* 1677-80. Nos. 270, 1512, *infra*, pp. 57-59.

<sup>3</sup>*Infra*, p. 97.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 1511. September 16, 1680. A letter (from Secretary Jenkins ?) to Godolphin mentions the legal skill shown by Long in his defence before the Lords of Trade .

<sup>5</sup>*Ib.* No. 1512.

It is not surprising that the Assembly of Jamaica with Long as its Speaker rapidly expanded its ideas of what its functions and privileges ought to be.

Sir Thomas Lynch's<sup>1</sup> difficulties with the Assembly were caused by his need for additional supplies to strengthen the island fortifications, for at first he feared a Spanish attack to revenge Panama, and in 1673 came news of the Dutch war. Lynch was sent out with strict orders to observe the terms of the treaty of peace with Spain ; to revoke all commissions granted by Modyford, and, by offering pardon and lavish grants of land, to persuade the buccaneers to settle down as planters in Jamaica.<sup>2</sup> Lynch expected these instructions would make him very unpopular ; to his pleased surprise he found his arrival welcomed ; but then as he wrote to Arlington, people always love novelty, and Modyford and buccaneering were not as popular as they had been seven years before.<sup>3</sup> Modyford had been too generous in his grants of land to his family and friends, and many buccaneers were furious with Morgan for cheating them of their fair share of the spoils of Panama. But in six months, the feeling of novelty had worn off, and the planters, contrasting their present condition with the old days of buccaneering, grew peevish. Their profits from their lands were lessened by the failure of the cocoa crops,<sup>4</sup>

<sup>1</sup>He was appointed Lieutenant-Governor to command in absence of Modyford on September 23, 1670. *C.S.P. Col.* 1669-74. No. 272. His commission is dated January 5, 1671 ; his instructions, January 31, and his commission from the Duke of York, as Commander-in-Chief of all His Majesty's ships in Jamaica, January 13. *Ib.* 381, 367, 386. Lynch had served in the island under Doyley and at the Restoration was in England on leave. He then obtained a grant of the office of Provost-Marshal for life, had returned to Jamaica and as one of Littleton's Council had taken a leading part in the government. He left after Modyford arrived, having been dismissed from the Council and his office of Chief Justice. *Ib.* 1661-8. Nos. 13, 697, 934. *A.P.C.* I. No. 499.

<sup>2</sup>*C.S.P. Col.* 1669-74. No. 367. <sup>3</sup>*Ib.* No. 580.

<sup>4</sup>*Ib.* An estimate in 1670 of the "commodities which this island produceth" gives the number of cocoa walks at 47, yielding 188,000 nuts. *Ib.* Nos. 271, 697.



the lack of the negro slaves, and the difficulty of getting and keeping white servants ; while the merchants of Port Royal lost ships and cargoes either to the Spaniards, or to their whilom friends, the buccaneers now turned pirates.<sup>1</sup> So that Lynch when he summoned the Assembly to meet in February 1672, had some grounds for his premonition of trouble. "A Thursday the Assembly meets" he wrote to his brother-in-law, Littleton, "and we are mighty full of politique reflections. You would wonder to see what statesmen we are growing, and how the fear of the 4½ per cent. makes the people resolve to do nothing at all. But I resolve if they will not [do] what I think for the King and public interest, I'll do nothing of what they judge is for theirs, so I doubt we shall part *Re infectam*."<sup>2</sup> (sic).

¶ On February 1 1672, the Assembly met.<sup>3</sup> On the 5th, the Council at its request, sent it the public accounts ; a joint committee of Council and Assembly considered the Governor's proposals for the revenue which the Assembly finally accepted and embodied in the Revenue Act.<sup>4</sup>

¶ The House then appropriated to the island's use all the royal quit rents.<sup>5</sup> But when Lynch sent it the King's letter bidding the people of Jamaica take measures for their defence, and urged it by message, and in conference with the Council to grant money to repair the fortifications of Port Royal, it refused to raise a penny. "The country," it said "was not able, and ought not to be charged with any tax" for such a purpose.<sup>6</sup> That is the Assembly, having carefully deprived the Crown of

<sup>1</sup>C.S.P. Col. 1669-74. Nos. 1178, 1180, 1226.

<sup>2</sup>*Ib.* No. 743.

<sup>3</sup>*Ib.* No. 747.

<sup>4</sup>*Ib.* Nos. 747, 752, 829. The various acts for the impost on liquor imported, licenses to sell drink, etc., were incorporated in one bill.

<sup>5</sup>*Ib.* Nos. 747, 827. Cf. Virginia where until 1684, the quit-rents were appropriated by the Assembly, for the use of the colony. B. W. Bond. *Quit-rent System in American Colonies*, p. 223.

<sup>6</sup>C.S.P. Col. 1669-74. No. 827.

control of all money, including the quit rents, raised in the island, boldly declared it was the Crown's duty not only to supply, but to pay for the defence of Jamaica.<sup>1</sup> And Lynch was compelled to dissolve the House "*re infectam*" as he had feared. ]

Early in March 1673 news reached Jamaica that a Dutch fleet was setting out for American waters,<sup>2</sup> so Lynch, hoping that the planters would now see the need for fortifying Port Royal, summoned an Assembly for May 10. But it would not grant money; it spent "divers days in unnecessary questions and disputes," questioned the power of the Governor and Council to commandeer some of the slaves from the nearest plantations to complete the defences at Port Royal, and was altogether so unreasonable, that Lynch "was of opinion that it would be to no purpose to enter into any debates or arguments," and dissolved it on May 16.<sup>3</sup> In the spring of 1674, Lynch called his third Assembly, to re-enact the laws which, made two years before, had not been confirmed in England, and were about to expire.<sup>4</sup> The Assemblymen, who like all colonists in the seventeenth century, had a strong prejudice against the professional lawyer,<sup>5</sup> seized the chance to introduce a bill "for the suppression of

<sup>1</sup>An early example of that "popular colonial theory that it is the undoubted right of every Englishman to settle where he likes, to behave as he sees fit, and to call upon the Mother Country to foot the bill." *A.P.C. I.* Preface. p. xxix. The question of defence was a cause of constant friction between England and the colonies. The English government admitted its duty to protect the colonies against attacks from European countries (the mainland colonies must deal themselves with local enemies), but it contended the colonists ought to contribute something, either men or money, to their own defence. Cf. *C.S.P. Col.* 1693-6. pp. xvi-xxiv. *Ib.* 1696-7. pp. xv.-xix.

<sup>2</sup>*Ib.* 1669-74. No. 1047.

<sup>3</sup>*Ib.* No. 1089. However, several of the members privately subscribed £800 for the fortifications.

<sup>4</sup>*Ib.* No. 1223.

<sup>5</sup>Lawyers were not allowed to practise their profession in colonies so dissimilar as Virginia and Massachusetts. Reinsch. *English Common Law in Early American Colonies*, pp. 19, 45.

lawyers." Lynch and the Council sent a message to say that such an Act might have awkward consequences ; the Assembly answered by voting that the Acts of Revenue and for the suppression of lawyers should continue and be in force for one and the same time. This, the first proposal to "tack" in Jamaican history, was completely successful : the Governor and Council yielded, and the Act passed.<sup>1</sup> On the whole, Lynch's experience of Assemblies was not happy, and writing to Worsley,<sup>2</sup> he said they could only be kept in order by the grant of greater powers to the Governor, powers which he presumed would be granted to the nobleman who was to succeed him.<sup>3</sup>

On the contrary, his successor, Lord Vaughan,<sup>4</sup> had less power, in some respects, than Lynch, for Vaughan came out at a time when the Crown was beginning to tighten its control over the colonies by curtailing the discretionary powers of the Governor. His commission<sup>5</sup> and instructions<sup>6</sup> show this. He was deprived of the power to nominate his Council ; the names were inserted in his commission.<sup>7</sup> When a vacancy occurred, he must report it to England ; only if the Council was reduced to less than nine members could he make temporary appointments to bring it up to that number ; and if he, with the Council's consent, suspended a Councillor, he must immediately send his reasons to England.<sup>8</sup> His

<sup>1</sup>*C.S.P. Col.* 1669-74. No. 1232.

<sup>2</sup>Secretary to Council for Trade and Plantations. <sup>3</sup>*Ib.* No. 1115.

<sup>4</sup>Third and last Earl of Carbery in the peerage of Ireland (1640-1713). He was M.P. for the borough of Carmarthen 1661-79, and for the county 1679-81. *D.N.B.* Vaughan, pp. 173-4.

<sup>5</sup>*C.S.P. Col.* 1669-74. No. 1258. It is dated April 3, 1674. A draft prepared by the Council for Trade and Foreign Plantations dated March 23, has Lord Carlisle's name, with Vaughan's written in above. *Ib.* No. 1251. Carlisle had been appointed Governor in January 1674. *Ib.* 1212.

<sup>6</sup>*Ib.* Nos. 1252, 1398. They are dated December 3 and 31, 1674.

<sup>7</sup>*C.S.P. Col.* No. 1251.

<sup>8</sup>*Ib.* 1252. Similar restrictions were imposed on the Governor of Barbados, Sir Jonathan Atkins, in 1673. Cf. Nos. 1185, 1186.

instructions gave him with the Council and Assembly the usual power of making laws "to continue and be in force for two years (except in the meantime His Majesty's pleasure shall be signified to the contrary), but no longer unless confirmed by His Majesty within the two years aforesaid."<sup>1</sup> The words in brackets were specially inserted by the Council for Trade and Foreign Plantations, to make it clear that the King reserved to himself the right to disallow as well as to confirm colonial laws.

The rule that colonial laws should be in force for two years only had been made chiefly for the sake of the colonies themselves. In these new countries, it was much better that laws should be in force only for a short period, and so could be easily changed to suit constantly changing conditions. The Crown too found it quite a convenient way of getting rid of objectionable laws, which for the time being it might be compelled to accept. But very soon it discovered that mere non-confirmation was ineffective. The laws had no suspending clause, but came into force in the colony as soon as passed by the Governor, Council and Assembly, so that whether they were confirmed or not they were valid for two years ; and when, as generally happened, they were re-enacted every two years, they never lapsed at all. Therefore, the Crown stated its right to disallow any Act at any time within the two years ; and further it forbade the general re-enactment of all laws. Vaughan was forbidden to re-enact "any law except on very urgent occasions, but in no case more than once, except with His Majesty's express consent."<sup>2</sup> This order was to prevent the Governor consenting to a law which had been disallowed, or which

<sup>1</sup>*ib.* 1669-74. Nos. 1392, 1398. On November 20, Secretary Coventry asked the Council to consider the clause in Vaughan's instructions, that all laws shall stand good for two years ; ought there not to be some exception in case His Majesty commanded to the contrary ? *ib.* No. 1386. The Council's answer was the clause in the text.

<sup>2</sup>*ib.* Nos. 1392, 1398. A similar clause had been inserted in Atkins' Instructions on the Council's recommendation. *ib.* No. 1264.

the Crown had not confirmed because it wished it to lapse.

Vaughan arrived at Port Royal on March 14, 1675, where he was received by the Lieutenant-Governor, Sir Henry Morgan,<sup>1</sup> "and several of the chiefest persons" of the town, "with all the civility and respect imaginable."<sup>2</sup> "The 15th my Lord remained in Port Royal viewing our fortifications and did declare all pleased him; the 16th my Lord came to St. Jago de la Vega and was received at the seaside with about a hundred and forty horse, and a company of foot, besides the gentlemen of the country and seven coaches, all which attended his Lordship to town—where he dined at Sir Thomas Modyford's<sup>3</sup>; after dinner his Lordship's commission was read with great solemnity."<sup>4</sup> After the planters' efforts to give him a fitting welcome, Vaughan was perhaps rather ungrateful when he wrote that to be Governor of Jamaica, "was not so glorious as was figured in England."<sup>5</sup> Indeed, he very shortly found that it was a position that brought him little honour and constant worry. Honest, but irritable and quick-tempered, he added to his difficulties by taking an immediate and violent dislike to Sir Henry Morgan.<sup>6</sup> Since his return to Jamaica as Sir Henry, Morgan had become the effusively loyal servant of the King; he had regained his popularity in the island, especially in Port Royal, and was closely allied with men of influence like Modyford, the former Governor and now one of the richest men in the

<sup>1</sup>Morgan, sent a prisoner to England in 1672, was appointed Lieutenant-Governor of Jamaica on March 23, 1674. He had arrived just a week before Vaughan. *Ib.* Nos. 1254, 1379. *Ib.* 1675-76. No. 458.

<sup>2</sup>*Ib.* No. 521.

<sup>3</sup>Modyford apparently returned from England with Morgan.

<sup>4</sup>*C.S.P. Col.* 1675-76. No. 484.

<sup>5</sup>*H. MSS. C.* 11th Report, App. p. 170.

<sup>6</sup>*C.S.P. Col.* 1675-6. No. 566. Vaughan to Williamson. "I am perfectly weary of him," *i.e.* Morgan. His letters continue in the same strain, and on July 24 1676, he charged Morgan and Byndloss before the Council with secretly encouraging pirates. *Ib.* No. 998.

colony, and Byndloss, a member of the Council. Now, if Vaughan could have won his support, he would have found it very useful in his struggle with a refractory Council, and an aggressive Assembly. As it was, alienated from Morgan and all his party by his personal feeling, his position and principles made it gradually more and more impossible for him to work with Long and his friends, so that by 1677 he was practically isolated.

Vaughan's troubles began in the Assembly summoned for April 26 1675, with disputes over the Revenue and Militia Bills.<sup>1</sup> The Revenue Bill contained the usual clauses appropriating the money to the public use of the island, but when it appointed a Collector to receive the money, and declared that the Act should be the Treasurer's warrant for all payments, it returned to the policy of 1664<sup>2</sup>. Vaughan and the Council agreed to the appointment of the Collector, but refused to accept the second alteration. A joint committee of the Council and Assembly met and agreed that the Governor's order should be the Treasurer's discharge, but the Assembly refused to yield. Vaughan then summoned the House to appear before him and after a long debate persuaded it to agree that all money should be issued by the Treasurer on his warrant. As the money was by the Act appropriated in detail for the public service, the change did not in reality much increase the Governor's control over expenditure, but it meant that he was at least cognisant of how and when money was paid.<sup>3</sup>

The Militia Bill caused a more serious deadlock, because the principle involved was fundamental. Under his commission the Governor was Captain-General of all military forces within the colony : he had absolute

<sup>1</sup>C.S.P. Col. 1675-76. No. 536.

<sup>2</sup>Ib. No. 537. cf. *supra*, pp. 25-27. The appointment of a collector was the Assembly's answer to the grant, by letters patent, of the office of Receiver-General to Thomas Martin, of London. As the Governor and Council sympathised with the Assembly's resentment, they readily accepted the change. Cf. *infra*, pp. 65-67.

<sup>3</sup>Ib. Nos. 537, 554.

power to levy, arm, muster, and command all persons, and to use them either within or without the colony as he saw fit. With the Council's advice and consent, he could build fortifications and declare martial law, where and when he considered it necessary.<sup>1</sup> Such wide powers were naturally distasteful to the Assembly, and in 1664, an Act for the better organising of the Militia had been passed, and twice re-enacted by Lynch.<sup>2</sup> It was not so much that the Militia Act put specific limitations on the Governor's powers, but its very existence tended to be a limitation. It admitted the Governor's right to supreme control over all armed forces, but then proceeded to lay down rules for their arming, mustering and drilling; so making it appear that the Governor's powers rested on the Act, that what he was not entitled to do by the Act he could not legally do at all. The planters were inclined to interpret it in that way. In 1671, Lynch had trouble with some men who, on the grounds that the Militia Act of 1664, was no longer in existence, refused to obey their officers; and in 1673, some of the Assemblymen questioned the Governor's power to commandeer their slaves to finish the fortifications at Port Royal.<sup>3</sup> Vaughan realised what a serious encroachment the Militia Act could be made on the King's prerogative.\* At his suggestion, when the bill came up before the Council on April 30, a clause was inserted to provide "that nothing in this Act contained be expounded, construed or understood to diminish or abridge his Excellency's power, but that he may in all things, and upon all occasions and emergencies act as Captain-General and Governor-in-Chief, according to all the powers and commands given unto him by His Majesty's commission."<sup>4</sup> Twice the Assembly refused to accept the amendment,<sup>5</sup> which it said with some truth,

<sup>1</sup>*C.S.P. Col.* 1669-74. No. 1251. <sup>2</sup>*Ib.* 1661-68. No. 836. *Ib.* 1669-74. Nos. 829, 1241. <sup>3</sup>*Ib.* Nos. 650, 1089. •

<sup>4</sup>*Journals* I. p. 8. C.O. 1/35. p. 420.

<sup>5</sup>May 11 and 13. *Journals* I. pp. 9, 10.

made the bill useless. Its fear was that, as Long said, "if this proviso pass, they should make everything in the Commission commanded to be lawful,"<sup>1</sup> not only in Vaughan's commission but in those of his successors ; in fact that it would be possible for the Crown to increase the Governor's powers. What the Assembly wished to do, was, by defining them, to limit them once and for all. When on May 13, the Assembly for the second time rejected the clause, Vaughan sent for it to the Council chamber and explained at length why the clause was necessary. It was added merely to prevent any diminution of the power given by his commission ; it was not intended to allow them to be increased. The next day, after a long and heated debate, the Assembly accepted the Governor's assurance and passed the bill with the proviso, but with, from its own point of view, a very important addition, for the clause now ran " nothing in this Act contained be expounded . . . . to diminish, add to, or abridge his Excellency's power."<sup>2</sup> Two days later, Vaughan prorogued the House to December 13.<sup>3</sup>

On the whole, Vaughan was justified in congratulating himself on the result of his efforts, for he had certainly defeated the Assembly on the two points in dispute, and he hoped that the laws, copies of which he immediately sent to England would be confirmed.<sup>4</sup> " I . . . do not a little please myself," he wrote, " that the island is like to receive in my government their first fixed and established laws."<sup>5</sup> During the next eighteen months, he wrote letter after letter,<sup>6</sup> to the Lords of Trade, and to their Secretary, Sir Robert Southwell, begging that the laws should be approved ; most of them were " municipal," so the reasons for making them could not

<sup>1</sup>C.O. 1/40. p. 194-5.

<sup>2</sup>*Journals*. I. pp. 9, 10.

<sup>3</sup>C.S.P. Col. 1675-6. No. 554. *Journals*. I. p. 11. It must have been dissolved by proclamation, it did not meet again.

<sup>4</sup>C.S.P. Col. 1675-76. No. 747.

<sup>5</sup>H. MSS. C. 111*th* Reports. App. p. 170.

<sup>6</sup>C.S.P. Col. 1675-76. Nos. 799, 801, 822, 863, 865, 967.



be appreciated by those who did not know the conditions in Jamaica.<sup>1</sup> He received no answer till the autumn of 1676, when he learnt from a letter of Sir Robert Southwell's,<sup>2</sup> that the Lords of Trade had taken such serious exception to the laws that there was small chance of them being confirmed. He immediately wrote<sup>3</sup> to ask that if, as was necessary under the terms of his instructions, he was sent authority to re-enact, he should at the same time be told what amendments the Lords would have made. He repeated his request in January 1677, but received neither instructions nor authority to re-enact.<sup>4</sup> As the laws expired in April, he was in an awkward position. He had to choose between continuing the laws by proclamation or calling an Assembly and re-enacting them without permission from England. Probably if he considered the first alternative it was only to dismiss it as impracticable; the Council would be very much against such a course of action, and it was certain to be very unpopular, particularly any attempt to continue the Revenue Act. Therefore, he choose to summon the Assembly, and re-enact the laws; though he very much feared he would have trouble; factious people were busy labouring to prevent his good agreement with it.<sup>5</sup>

His forebodings proved true. The Assembly spent the first fortnight quarrelling with the Governor over small points in which it considered its dignity involved;<sup>6</sup> when it came to serious business, it developed an attack all along the line on the royal prerogative and, to add to Vaughan's difficulties, it was actively supported by the Council.<sup>7</sup> On April 26 and 27, the House debated what it called its "Bill of Privileges." The terms of

<sup>1</sup>*Ib.* No. 801.

<sup>2</sup>*Ib.* No. 1002, dated July 20, 1676.

<sup>3</sup>*Ib.* No. 1094, dated October 30.

<sup>4</sup>*Ib.* No. 1677-80. Nos. 21, 172. The Lords of Trade wrote to Vaughan on July 28 (No. 1001), but did not mention the laws. *A.P.C. I.* No. 1091.

<sup>5</sup>*C.S.P. Cal.* 1677-80. No. 172. <sup>6</sup>*Ib.* Nos. 169, 174. It met on April 9, 1677. <sup>7</sup>*Ib.* No. 270.

the original bill are not preserved, but its object was to declare the laws of England in force in the island.<sup>1</sup> There was nothing new in that ; since 1664, a bill for this same purpose had been passed by every Assembly.<sup>2</sup> But Vaughan had heard privately from Southwell how strongly the Lords of Trade had objected to the law of 1675, "as a thing that may be of very evil consequence for the security of " the colony, for " the laws in England favour not any guards or standing forces. The statutes here have taken away the power and authority of the Council Board."<sup>3</sup> Therefore, he prevailed upon the Council to draft a bill of their own, with a clause to the effect " that nothing in this or any other Act contained shall be construed . . . to abridge alter infringe abrogate or enlarge the powers and authority of His Majesty's commission given to His Majesty's Captain-General and Governor-in-Chief of this Island, but that the said commission be and remain in the same force and validity as the said commission was before the making of this Act."<sup>4</sup> The Assembly refused to accept the Council's Bill ; the new clause entirely destroyed the most valuable part of the Act, for it left to the Crown that prerogative power which the Assembly intended to limit in Jamaica as it was limited in England. It was not appeased by the inclusion of the word "enlarge" as Vaughan may have expected it to be from his experience of the good effect created by the words "add to" in the saving clause of the Militia Act in 1675. When the Assembly refused the clause with "enlarge" in it, its obvious aim was not merely to prevent any extension of the Governor's powers in the future, but to limit those he already possessed ; its bill was definitely a bill not only to secure the privileges the planters had, but to extend them at the expense of the royal power.

<sup>1</sup>*Ib.* No. 174. <sup>2</sup>*C.O.* 139/1. p. 65. *C.S.P. Col.* 1669-74. Nos. 829, 1242. *Ib.* 1675-76. No. 538.

<sup>3</sup>*Ib.* No. 1002. •

<sup>4</sup>*C.O.* 139/1. p. 166.

A joint committee of the Council and Assembly had several meetings, on May 1 and 2, but failed to reach agreement. The Council urged "that the King may seem to have a greater power here than in England, and so a clause may be admitted to secure his prerogative, to which was answered by the House that His Majesty had given us here the same privileges as his subjects in England."<sup>1</sup> On May 4, the bill without the saving clause was read a third time, sent to the Council and rejected.<sup>2</sup> Then the Assembly remembered what Vaughan had said two years before, that it could hold up all business until the Governor consented to pass the Acts it wanted ;<sup>3</sup> and promptly voted that "as it is the just rights and inherent privileges of His Majesty's subjects in this island that they ought to have the benefit and immunities of the laws of England....therefore, until their Bill of Privileges be made into an Act, they think not fit to proceed on any further business," and would, therefore, adjourn for a month. Vaughan immediately sent for the Speaker and Assembly to attend him, and after the conference, the House, apparently in a more reasonable mood, left him to begin the bill again. The next morning, May 5, he adjourned it for five days in the hope that its members would return still more peacefully inclined.<sup>4</sup>

No more is heard of the Bill of Privileges, but an "Act declaring the laws of England in force in this Island," was among those finally consented to by Vaughan. The Act did not contain a saving clause, and if the Governor considered it less objectionable than the original Bill of Privileges, then that Bill must have been very objectionable indeed, for the Act re-stated in very forceful terms the right of the people of Jamaica to the laws of England : "Whereas the laws and statutes heretofore made and used in our native country, the

<sup>1</sup>C.O. 139/1. p. 165. C.S.P. Col. 1677-80. No. 209.

<sup>2</sup>Ib. No. 208, 209. <sup>3</sup>*Supra*, p. 46. <sup>4</sup>C.O. 140/2. p. 574. *Journals*. I p. 13. C.S.P. Col. 1677-80. Nos. 208, 209.

Kingdom of England, for the public weal of the same, and all the liberties immunities and privileges contained therein, have ever been of force, and are belonging unto all His Majesty's liege people within this island as their birthright, and that the same now are, ever were, and ever shall be deemed good and effectual in the law," it was enacted "by the Governor Council and Representatives of the Commons of this Island now Assembled" "that no freeman, inhabitant or resident, of this island, of what state or condition so ever he be, may or shall be taken or imprisoned or disseized of his freehold, goods, chattels, liberties, free customs or hereditaments, or be touched, molested, harmed or adjudged in life, member or estate, or be exiled, outlawed or destroyed in any manner whatsoever, but by the laws of the Kingdom of England, or the laws of this island to be tried in the ordinary courts of justice ;" "and none of this people [is] to give, grant or pay any loan, tax, aid, benevolence, imposition or other such like charge, but by the Act of Parliament in England naming and relating to this island, or by common consent of the General Assemblies of this island . . . and no proceedings to the contrary heretofore had in any of the premises to the prejudice of the people of this island, shall be drawn hereafter into any consequence or example."<sup>1</sup> The men who drafted this Act certainly knew "Magna Carta and the ancient statutes of England,"<sup>2</sup> as well as the more modern Petition of Right.

The object of the Act was to make perfectly clear what was meant when the laws of England were declared to be in force in the island. By the laws of England were meant the laws that secured the life and liberty of the subject against arbitrary action by the Crown, that prevented "the power and authority of the Council Board" from developing into prerogative courts. The exception to the right of taxing themselves, made in favour of the Parliament of England, is startling in the context.

<sup>1</sup>C.O. 139/5. <sup>2</sup>C.S.P. Col. 1669-74. No. 704.

It is true that Parliament assumed the power to legislate for the plantations, and that its right to do so was generally admitted. But to choose taxation as the subject for a definite statement of Parliament's right, and in the middle of an Act setting forth the rights of the colonists, would seem a sign of temporary mental aberration on the part of the Jamaica Assembly. It never made such an exception again. The Act was carefully worded so that only those acts of Parliament could apply to Jamaica which mentioned it by name ; so securing the colony against any attempt by the Crown to levy money in Jamaica under authority of a general grant of Parliament.<sup>1</sup> In this particular, as in every other, the Act for declaring the laws of England in force shows a deep distrust and dislike of the royal authority.

On May 10, the Assembly met again and guided by the golden thread, the necessity of maintaining its own power and putting bounds upon the Crown's, fell to work. The Militia Act raised the same question of the Governor's commission as in 1675. Here Vaughan found himself openly opposed by the Council as well as by the Assembly. "I was troubled," he wrote to Secretary Coventry, "as much as surprised to find they (*i.e.* the Council) should so resolvedly oppose His Majesty's prerogative in most matters on this occasion ; and particularly about the proviso [in the Militia Act] there was such collusion used between the Council and Assembly, that after one had agreed to it, the other was not to let it pass." Seven of the eleven Councillors present on May 21 voted the clause out ; Colonel Long, their leader, saying "that His Majesty's commission was no law to them, and that there might be that which was unlawful in such commissions,"<sup>2</sup> and Vaughan was finally compelled to pass the Act without the saving clause.<sup>3</sup>

<sup>1</sup>*C.S.P. Col.* 1677-80. No. 1346. The Lords of Trade in 1680, inquired of the Law Officers whether tonnage and poundage as well as subsidies granted to the Crown by Parliament could not be levied in Jamaica. *Infra* p. 102.

<sup>2</sup>*C.S.P. Col.* 1677-80. No. 270. <sup>3</sup>*C.O.* 139/5.

Meantime, in the midst of its legislative activities, the Assembly again came into conflict with the royal prerogative when it punished Thomas Martin for claiming the rights granted him as Receiver-General by the royal letters patent. The question of colonial patronage is too large to be dealt with here, but a brief statement of the position about 1677 is necessary to explain events in Jamaica. From 1670 onwards, the Crown steadily increased the numbers of officials it appointed in the colonies.<sup>1</sup> Offices formerly filled by the Governors were granted by patent to men residing in England, who too frequently exercised their duties by deputy. When the supply of offices ran out, new ones were created, and Governors were forbidden to fill any office to which the Crown appointed by letters patent.<sup>2</sup> The policy was unpopular with both Governors and colonists; the Governors because with loss of patronage, they lost influence, and the chance to increase those perquisites necessary to their purses; the colonists, because the more offices were filled in England, the fewer remained open to them. The men who came out, whether the patentees or their deputies, were ignorant of colonial conditions, eager to make as much as they could from their offices, and were consequently often oppressive and corrupt.<sup>3</sup> In April 1674, the office of Receiver-General of all duties, impositions, quit-rents, fines, forfeitures and escheats payable to the King in Jamaica had been conferred on Thomas Martin and Leonard Compeare, merchants of London.<sup>4</sup> In February 1676, Martin arrived in Jamaica. Vaughan and the Council did not follow Lynch's example and refuse to admit him to his office, but they made it almost impossible for

<sup>1</sup>*C.S.P. Col.* 1669-74. Nos. 919, 1119, 1120, 1260. In the years 1672-4, four offices in Jamaica were granted for the first time by letters patent. The Crown's policy is stated in Coventry's letter to Governor Atkins of Barbados. November 1676, quoted in Harlowe, pp. 224-5.

<sup>2</sup>*C.S.P. Col.* 1669-74. No. 1186, 1252.

<sup>3</sup>*Ib.* No. 1184, *Ib.* 1677-80. No. 1182, 1302, 1342, 1362.

<sup>4</sup>*Ib.* 1669-74. No. 1260.

him to act. In the first place, they said Martin could only, under the terms of the Revenue Act of 1675, collect the quit-rents ; then they demanded high security, and fixed his fees at a very low rate.<sup>1</sup> Martin refused to accept these terms, and petitioned the King for redress.<sup>2</sup> It can readily be imagined how unpopular Martin was with the people ; not only was he one of the hated class of patentees, but his appointment ignored the Assembly's claim, and the practice of ten years, that the money raised in the island was to be collected by locally appointed officials.

On May 19, the House took into its consideration several charges against Martin, now member for the parish of St. David's.<sup>3</sup> Martin, who seems to have been a worthless character,<sup>4</sup> had attempted to bribe the Governor to admit him to his office. Had this been the only charge, the Assembly would probably not have concerned itself about him at all ; but he had also committed a breach of privilege by filing a bill in Chancery against the Speaker and one of its members, and had gone about saying that he alone had the right to collect all money raised in the island.<sup>5</sup> The Assembly was so furiously indignant, that even the Journals, those decorous records of resolutions voted and bills read, seem to come to life under stress of the emotions they are recording, and give a picture of the worthy members rendered almost speechless from rage and surprise at such presumption. Martin and his attorney, Storey, were immediately committed to prison. Storey in a very few days

<sup>1</sup>*Id.* Nos. 986, 998. Lynch had refused to admit the deputy of the Clerk to the Supreme Court at St. Jago in 1674. *Id.* No. 1302. For a similar case in Barbados, *see Id.* Nos. 1167, 1281.

<sup>2</sup>*A.P.C.* I. No. 1086.

<sup>3</sup>*C.S.P. Col.* 1677-80. No. 209.

<sup>4</sup>*Id.* 1681-85. No. 1759. "Whose ill qualities and ill-grounded Patent has made the King to be ill served and the revenue ill-managed. His frenzies that hurt us have at last killed himself." Lynch to Lord President of the Council, June 20, 1684.

<sup>5</sup>*Id.* 1677-80. No. 209.

submitted and was released, but Martin could not, or would not satisfy the House.<sup>1</sup> Declaring that Martin "hath betrayed the rights and privileges of the Commons of this Island in endeavouring to put a restraint on the whole power of making laws, and publicly asserting that the Governor, Council and Assembly could not raise any money here to the public use of the Island, but what he ought and must collect it by virtue of his patent", on June 16, the Assembly expelled him from the House, fined him £50, and ordered him to send to the Governor a written recantation of his statements.<sup>2</sup>

Vaughan had throughout supported the Assembly. Martin's claim that he alone had the right to collect all the revenue raised in the island, he characterised as an "impudent assertion," for in England no man doubted that Parliament could say how or by whom money voted was to be collected. The Assembly sent him its thanks for his defence of its privileges, and parted with him on June 23, for a month's adjournment, on very friendly terms.<sup>3</sup> Yet no sooner had the members re-assembled, than all good feeling was destroyed by what Vaughan considered their unwarrantable interference in his executive sphere.

The trouble was caused by a condemned pirate Browne, who as a last resort, on July 24, petitioned the Assembly that he might have the benefit of the Act of Privateers.<sup>4</sup> The House graciously considered the petition, and sent a deputation to the Governor asking for a few days'

<sup>1</sup>*C.S.P. Col.* 1677-80. No. 209. Martin complained "They never told me wherein my answers, petitions or addresses were short or defective, so that it was impossible for me to please them; only they voted all insufficient, but never said what they would have done." *C.O.* 1/41. p. 133.

<sup>2</sup>*Ib.* p. 127. *C.S.P. Col.* 1677-80. No. 286.

<sup>3</sup>*Journals.* I. p. 14.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 365. In April, an Act against foreign attachments, *i.e.* taking foreign commissions, had been passed, which offered pardon to those who surrendered within twelve months. *C.O.* 139/5. Browne had no right to claim any privilege under the Act as he had not surrendered, but been captured. *Ib.* Nos. 375, 383.



reprieve, so that it might have time to consider whether he came under the aforesaid Act ; but the Governor " could not be spoken with." A second deputation, sent after a great debate, succeeded in extorting from Vaughan a written reply to the effect that he had already pardoned eight of Browne's companions, but did not consider Browne a fit subject for mercy. This did not satisfy the Assembly ; it despatched a third deputation, again asking for a few days' reprieve, pointing out that to deal severely with Browne would prevent other privateers from surrendering. Vaughan coldly answered that he had given his mind in writing, and did not share their fear of discouraging other privateers. The Assembly could do no more that night, but the next day, it voted that there should be further examination of Browne's trial. On the 26th, when Browne's petition was re-read, it was discovered that he claimed that no notice had been taken at his trial of the Act of Privateers, thereupon the House, not wasting time to inquire into the truth of this statement, immediately voted that the execution be suspended, and sent a Speaker's warrant to the Provost-Marshal ordering him " to forbear the execution of Captain Browne, notwithstanding any warrant issued as he shall answer it at his peril." Vaughan had been keeping a close watch on the Assembly's proceedings and acted promptly. Browne was executed at once, the Speaker's warrant and the *Habeas Corpus* issued by the Chief Justice, Long, arriving half-an-hour too late.<sup>1</sup> Before the news could reach them, Vaughan sent for the Speaker and Assembly, signed some bills, and dissolved the House. He had suffered quite enough at its hands: it was not making any progress with the act for the revenue, nor was it likely to, when it discovered how its orders with regard to Browne had been frustrated. He preferred to wait a short time when a new Assembly might be more amenable.<sup>2</sup>

<sup>1</sup>*C.S.P. Col.* 1677-80. Nos. 365, 368, 375, 383.

<sup>2</sup>A new Assembly met on September 6, but after a session of three weeks, was dissolved before a revenue bill was passed, and Vaughan was left with no supplies save what the quit-rents would yield. *Id.* Nos. 398, 401.

The Assembly's action in the case of the privateer Browne has been rather fully detailed because it forms the climax of a series of actions, dictated by a policy of exalting wherever and whenever possible the power of the "Representatives of the Commons of this Island." It shows how ready, indeed eager the Assembly was to seize upon any excuse for so exalting its power. With regard to Browne, it had no justification whatever for its action ; he was a notorious scoundrel, had had a fair trial, and been condemned on the verdict of a jury. In asking for his reprieve, until it considered whether he came under the Act of Privateers, the Assembly attempted to assume the power of a court of revision, the function of the Governor and Council ; in ordering the Speaker to issue his warrant countermanding the Governor's orders for the execution, it defied the royal authority in the person of the King's representative, and invaded the sphere of the executive. "It is not to be doubted" the Lords of Trade wrote with truth "but the Assembly have endeavoured to grasp all power as well as that of a deliberative voice in making laws," and that, they considered, justified the change they proposed to make in the system of government in Jamaica.

## CHAPTER IV.

### THE CONSTITUTIONAL CRISIS. 1676-1680.

The period commonly associated with the ascendancy of Danby in the King's counsels was one of administrative reorganisation making for greater efficiency and economy in all departments of state. In the case of the colonies, the supervision of their affairs was transferred in March 1675 from the Council for Trade and Foreign Plantations to a committee of the Privy Council known as the Lords of Trade.<sup>1</sup> Henceforward, there is a great improvement in the methods of dealing with colonial business. The Lords of Trade met regularly; they worked systematically and with enthusiasm, they were careful to obtain the fullest and latest information before making a decision. As members of the Privy Council they were able to ensure that their recommendations were adopted and acted upon with reasonable dispatch.<sup>2</sup> Their aim, to make the will of the Crown effective in the colonies, was not merely the result of a desire for despotic power, but of the perception that, without some effective control from England, the selfishness of the colonies and their jealousy one of another would work great harm to England, themselves, and their common trade. As their common dependence on the Crown was the only link between colony and colony, and between the colonies and England,<sup>3</sup> the Crown was the only authority which

<sup>1</sup>*A.P.C. I.* No. 1021. W. Root. "The Lords of Trade and Plantations." *A.H.R.* Vol. 23, pp. 20-41. One of the reasons for the abolition of the Council for Trade and Foreign Plantations was its costliness.

<sup>2</sup>*Id.* The change after 1675 was not so much "in processes of doing things" as "in infusion of a sharper tone and perfecting functions of colonial control."

<sup>3</sup>W. Root, *Relations of Pennsylvania with Great Britain 1696-1765*. (1912) "Colonies were dominions, not incorporated in the realm, but with the status of dependent communities," pp. 34, 35, 39. Governor Atkins of Barbados, writing to the Council for Trade and Foreign Plantations in 1673, said it was undeniable that Barbados and the other islands were not annexed to the Crown of England but depended solely on the King. *C.S.P. Col.* 1669-74. No. 1173.

could check any developments hostile to the interests of the whole empire, or contrary to the interests of England and the individual colonies.<sup>1</sup> The maintenance of the prerogative of the Crown was, therefore, a cardinal principle of the policy of the Lords of Trade. Every colonial law, every colonial institution which seemed in any way to encroach upon the prerogative was looked on with suspicion, and wherever possible modified or abolished. The charters of the New England colonies and the constitution of Jamaica were alike obstacles to the power of the Crown within their respective provinces and consequently were attacked. A necessary preliminary to the establishment of effective royal control was to secure a permanent revenue for the support of the colonial governments, for only by that means could the Governor, the official charged with the duty of carrying out the instructions of the Crown, be rendered independent of the local Assemblies, and free to obey orders from England.

In 1676, the Lords of Trade began the examination of the laws sent by Lord Vaughan the previous year,<sup>2</sup> and at several meetings in May and June went very carefully through them, noting the points of which they disapproved.<sup>3</sup> Sir Thomas Lynch was in attendance

<sup>1</sup>In many cases, the Crown, and not the colonists, was the champion of the liberty of the subject when it was threatened by Acts of the colonial assemblies. Cf. Russell, *Review of Colonial Legislation*. pp. 109, 151-153.

<sup>2</sup>They were received in December 1675. *C.S.P. Col.* 1675-76. No. 747.

<sup>3</sup>May 18, 26, 30. June 1, 7, 8, 12, 15, 19, 22. This was the first time that there had been any serious consideration of the laws, which had been sent to England by each Governor of Jamaica since 1664. On June 6, 1666, the Jamaica committee of the Privy Council was ordered "to meet and consider of some Bills transmitted thence to be made into laws and to then report the same." The Bills were presumably those sent by Modyford: but there is no further reference to them, nor is there a report. *A.P.C. I.* No. 679.

In 1672, the Council for Trade and Foreign Plantations began to examine the thirty-four laws sent by Lynch. A committee was appointed, seven of the laws were read, but only one was approved. They objected

to explain whenever necessary the reasons for the passing of any act, the customs and the needs of the colony ; for the Lords of Trade were always ready to allow variations from English custom, so long as they could be shown to be advantageous to the colony and did not contravene two fundamental principles; did not conflict with the rights of the Crown, or run contrary to the principles of English law.<sup>1</sup> The chief objection to these Jamaica Acts was that in so many ways they did conflict with the rights of the Crown. For instance, the "Act for declaring the laws of England in force in this Island," was judged "a thing that may be of very evil consequence for the security of the place. For the laws of England favour not any guards or standing forces. The statutes here have taken away the power and authority of the Council Board, and several other things are enumerated, which considering the remoteness of that frontier place might leave all in confusion if everything that is law in England should at the demand of every subject there be strictly put in execution."

Then in the "Act for regulating the fees of the several offices of the island," "some officers whom His Majesty may appoint are obliged to give such high security as will incapacitate any to receive such favour or His Majesty to grant it." A fault common to them all was "that all taxes and forfeitures do almost in the general go to the uses of the Island without depending on such or any other application by His Majesty."<sup>2</sup> And on reading the "Act for the speedy taking out of patents," which stated in the preamble that the King had permitted the appropriation of the quit rents for the support of the to the "Act for speedy taking out of patents . . . and more easy collecting the quit-rents," as "very unreasonable that any Assembly should oblige his Majesty to part with his land for a halfpenny an acre," but they appear not to have taken exception to the appropriation of the quit-rents to the support of the government. *C.S.P. Col.* 1669-74. Nos. 829, 975, 1003.

<sup>1</sup>*Ib.* 1677-80. No. 226. Russell, *Review of Colonial Legislation*, pp. 139, 174.

<sup>2</sup>*C.S.P. Col.* 1675-76. No. 1002.

Government, the Lords indignantly ordered "that inquiry be made what evidence or public act" the Assembly "can produce whereby His Majesty has disposed of these his rights for the use of the Island."<sup>1</sup> All the laws were equally carefully scrutinized,<sup>2</sup> and having "spent many days upon the reading of the laws" at the end of July, the Lords were "deliberating on a report to the King," but they went no further; no more is heard of the laws that year.<sup>3</sup>

On June 22, while they were still considering the laws, a case which concerned the prerogative came before the Committee. Lord Vaughan wrote that a ship with three hundred negroes had been seized and by his orders libelled in the Court of Admiralty for infringing the monopoly of the Royal African Company. The admiralty judge had dismissed the case, accepting the plea put forward that the ship was in the parish of St. Dorothy's as defined by an Act of the Assembly, and, therefore, could not come within the jurisdiction of the Admiralty. Vaughan had then sent it to the common law court; but judgment was given in favour of the owner of the ship on the ground that the patent of the Royal African Company, being contrary to the Statute against monopolies, was invalid.<sup>4</sup> The Lords of Trade thought the action of the Admiralty judge "very strange," and immediately consulted Dr. Lloyd, Surrogate of the Admiralty, and the Attorney-General.<sup>5</sup> They gave their opinion, that in the first place, it was not in the power of the Governor,

<sup>1</sup>C.O. 1/36. p. 166.

<sup>2</sup>Their comment on the "Act for the perpetual anniversary celebrating the tenth day of May for ever, as a thanksgiving for the success and conquest made and obtained on his most sacred Majesty's Island of Jamaica"—"that this Act be laid aside, and solemnity discontinued as too much reflecting upon the circumstances of those times, and of that conquest which rather seemed to be in opposition to his Majesty, so that the recital of the Act is not true in fact," shows how carefully they considered the implications of the most unimportant acts. C.O. 391/1. p. 126.

<sup>3</sup>*Id.* 138/3, p. 88. <sup>4</sup>*C.S.P. Col.* 1675-76. No. 863.

<sup>5</sup>*C.S.P. Col.* 1675-76. Nos. 957, 958.

Council and Assembly by any Act for dividing the island into parishes, to make the high seas part of a parish and so deprive the Lord High Admiral of his jurisdiction, for no Act of the Assembly, which is " derivative " from grants of privileges made by the King to the people in Jamaica can prejudice the right of the Lord Admiral, who holds his office by a grant previous to any made to the colonists ; in the second place, the statutes 13 and 15 Rich. II. and 2 Hen. IV. being made for England were not law in Jamaica unless the King declared them to be so ;<sup>1</sup> finally, the statute against monopolies did not extend to Jamaica.<sup>2</sup>

On July 13 the Lords of Trade, having requested the Lord Chancellor to be present, heard the argument of the Attorney General, read Dr. Lloyd's report, but after some debate, decided to do no more at present than order Vaughan to take care to preserve the Admiralty jurisdiction.<sup>3</sup> The case is merely another example of colonial jealousy of the Admiralty courts,<sup>4</sup> and in itself was of little importance, but its effect must have been to strengthen the impression in the minds of the Lords of Trade of the unsatisfactory nature of the Jamaica laws, and at the same time, they learnt from the Attorney-General that, in his opinion, the rights of the people of Jamaica depended solely on the grant of the King ; a suggestive and useful piece of information.

In January 1677, the Lords of Trade began a year of hard work on " the business of Jamaica." On the 11th they received and read a petition from Thomas Martin, the Receiver-General of Jamaica, who was prevented by the action of the Governor and Council from entering upon his office.<sup>5</sup> At the beginning of Feb-

<sup>1</sup>*Ib.* Nos. 972, 976. As proof that the plea that 13 and 15 Rich. II. and 2 Hen. IV. were in force in Jamaica was invalid, Dr. Lloyd cited the Assembly's recent act for declaring the laws of England in force in the island.

<sup>2</sup>*Ib.* Nos. 987, 989.

<sup>3</sup>*Ib.* No. 989.

<sup>4</sup>Root, *Relations of Pennsylvania and Great Britain*, pp. 97-8.

<sup>5</sup>*C.S.P. Col.* 1677-80. No. 6, *supra* p. 66.

ruary,<sup>1</sup> they went very thoroughly into the matter ; they heard Martin's counsel, and then an explanation of the planters' point of view from Lynch and Molesworth.<sup>2</sup> From the latter, they learnt two very displeasing facts. first, that "besides the quit-rents, fines, escheats, for which the Receiver might take fees as being your Majesty's proper revenue," there were other taxes which were "deemed to be the particular revenue of the island, as being imposed and assessed for the particular use thereof," and which the Receiver had no right to collect :<sup>3</sup> and secondly, that the Revenue Act of 1675, which had not been sent with the others, had been so altered by the Assembly on hearing of Martin's patent, that money formerly granted to the King was now raised for the use of the island.<sup>4</sup> The Lords of Trade expressed their strong disapproval of this attempt to evade the King's patent, and of the distinction made by the planters between the two kinds of revenue ; "as in England so in Jamaica no public levies ought to be made otherwise than in your Majesty's name."<sup>5</sup>

On April 26, "it being represented that the laws of Jamaica transmitted by Lord Vaughan have been

<sup>1</sup>*Ib.* No. 6, I. and II.    <sup>2</sup>Hender Molesworth, one of the Council of Jamaica. *Ib.* 1669-74. No. 1251.

<sup>3</sup>*A.P.C.* I. No. 1154. Jamaica was not alone in making such a distinction between royal and provincial revenue. It was a commonplace in the Leeward Islands and Virginia. Cf. Higham, *The Development of the Leeward Islands*, 1660-88, pp. 222-3. Higham, "Some Treasurer's Accounts of Montserrat." *E.H.R.* 38, pp. 87-90. Flippin, *The Royal Government of Virginia*, pp. 272-7. The whole question is, however, one that has yet to be worked out.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 6. Though Martin did not reach Jamaica till early in 1676, a copy of his patent was brought out by Sir Thomas Modyford on returning to the island in the spring of 1675.

<sup>5</sup>*Ib.* *A.P.C.* I. No. 1154. The Lords did not report on the matter till July, when orders were sent to Vaughan to admit Martin at once. No notice was taken of this order, nor of that sent on September 28, ordering Vaughan to release Martin now in prison by order of the Assembly. Martin was not released until August 30 1678, on the arrival of Carlisle. *C.S.P. Col.* 1677-80. Nos. 401, 408, 410, 770. *A.P.C.* I. Nos. 1163, 1210.



a long time lying before their Lordships. . . . and that the time of two years for which they are to continue in force is nearly expiring," the Lords decided to request the Lord Chancellor, Finch and Lord Treasurer, Danby, "to assist at the Committee," "when their Lordships will take a review of all those laws and the minutes taken upon reading them, in order to present them to His Majesty with such amendments. . . . as shall be agreed on."<sup>1</sup> Four days later, they read two of the acts, and made some slight amendments, but "upon the whole matter their Lordships think fit to refer the whole body of laws to the Attorney-General, with the observations made by the Committee thereupon for his perusal and opinion how far fit to be allowed by His Majesty." His attention was specially directed to the Act declaring the laws of England in force, how far it was "necessary and useful to the Island, how far consistent with the King's right of dominion, and what qualifications [are] proper thereunto." He was also ordered to prepare "a Bill (like Poyning's Law in Ireland) directing the manner of enacting, transmitting and amending these laws by His Majesty here in England."<sup>2</sup>

The Lords of Trade had evidently returned to the Jamaican laws with their former objections strengthened by their investigations in the cases of Martin and the interloping negro ship; and now decided that, though such of the Acts as the Attorney-General approved might perhaps be confirmed, in future the Assembly of Jamaica should have only the limited legislative power of the Irish Parliament. They apparently intended to send the bill drafted by the Attorney-General to Jamaica to be passed there; it would, therefore, appear that at this time, the Lords thought any change in the existing system of law-making could only be made, or could best

<sup>1</sup>C.S.P. Col. 1677-80. No. 195.

<sup>2</sup>C.S.P. Col. 1677-80. No. 200. This is the first recorded instance of the reference of colonial laws to the Law Officers. Russell, *Review of Colonial Legislation*, p. 38.

be made, by an Act of the Governor, Council and Assembly. As will be seen, they later changed their mind, and decided that the Crown could alter the form of Government on its own authority.

By May 10, they had re-read all the laws, and sent them with their remarks to the Attorney-General.<sup>1</sup> Five weeks later, they noticed the length of time he had had the laws, and ordered him to be written to, to hasten with his report.<sup>2</sup>

On September 6, the Lords were reminded of the laws, still with the Attorney-General, when Secretary Coventry brought them papers dealing with the Assembly's proceedings against the Receiver Martin, in the previous May and June ;<sup>3</sup> and immediately ordered that the Attorney-General " be put in mind of [the laws] in order to his hastening their return."<sup>4</sup> By this time, too, they had probably seen Lord Vaughan's long letter of May 28 to Coventry, in which he described his difficulties with the Council and Assembly, and complained that he could not act without the Council, most of whom were " old standers and officers in Cromwell's army." " There is so little power in the Governor," he wrote " and so much given the people that when they will, they may do what they please. . . . I have thoroughly weighed and considered all that a Governor can do in these colonies ; and while this is a young and growing one, impressions may be made which will not afterwards be received unless by force, and that with great charge to His Majesty as New England and Virginia are lively testimony."<sup>5</sup> Letters such as this from the Governor, confirmed the Lords in the opinion that there was urgent need for a change in the

<sup>1</sup>C.S.P. Col. 1677-80. No. 225, 226.

<sup>2</sup>Ib. No. 306. The letter was however suspended until after term.

<sup>3</sup>Ib. No. 401, *supra* pp. 66-67.

<sup>4</sup>Ib. No. 400

<sup>5</sup>C.O. 1/40. p. 195. Vaughan's complaint of his lack of power over his Council owing to their names being in his Commission is echoed by Governor Atkins of Barbados, who said that, under the existing rule, the Council seemed rather to be his Governors, than he theirs. C.S.P. Col. 1675-76. No. 973.

constitution of Jamaica.<sup>1</sup> A few days later,<sup>2</sup> there was a great debate "on the manner and circumstances of making laws in Jamaica." Secretary Coventry had informed the Committee that Lord Carlisle<sup>3</sup> was about to go out as Governor of Jamaica, and handed in a book of laws passed in the previous April. This brought up the whole question of the existing system of legislation; after debate it was finally decided to recommend to the King that in future no Assembly should be called without his express directions, and that no law should be consented to by the Governor until it had been approved by the Crown; which two rules are the essence of Poyning's Act. The following day, September 12, they began to review the new laws, and for the next month were busy correcting and comparing them with the Acts of 1675. Some of them, like the Act declaring the laws of England in force, and the Act for appointing the number of Assemblymen were "postponed."<sup>4</sup> The clause to preserve the Governor's Commission was added to the Militia Act. In every one, the "very improper"<sup>5</sup> enacting style "by the

<sup>1</sup>In a letter to Lord Carlisle in 1677 a Mr. Nevill pointed out that Jamaica was entirely deficient in "fundamental laws," i.e. laws concerning the possession of land, revenue, etc. 'This might easily be remedied "if some laws were first considered of here that might provide for all those several heads and be sent thither under the Great Seal, to be the foundation of their government and guides to their proceedings in their assemblies." Printed in *Interesting Tracts*, p. 112. As the only date given is 1677, it is impossible to say whether the writer was the originator of these ideas, or knew when he wrote, of the proposals of the Lords of Trade. But he here suggests exactly what the Lords of Trade did.

<sup>2</sup>*C.S.P. Col.* 1677-80. No. 412, September 11.

<sup>3</sup>Charles Howard (1629-1685), created Earl of Carlisle, 20 April 1661. He had fought on the Parliamentary side at Worcester, and under the Protectorate held various high offices. After the Restoration, he was made a Privy Councillor and raised to the Peerage. *D.N.B.* Howard, pp. 6-7.

<sup>4</sup>Six acts of 1677 were "excepted" by the Committee, viz., appointing the members of Assembly; declaring the laws of England in force; celebrating of the tenth day of May; a temporary act for a fort at Bonham's Point; regulating the freight of boats and wherries; Foreign debts. This last was ordered to be laid aside "as a very unreasonable law." *C.O.* 139/5.

<sup>5</sup>*C.O.* 138/3, p. 144-5.

Governor, Council and Representatives of the Commons of this Island now Assembled," was altered to "by the King's Most Excellent Majesty by and with the consent of the General Assembly."<sup>1</sup> No appropriation of public money was to be permitted; "fines, levies of money, forfeitures, etc. [must] be applied to the King's Most Excellent Majesty without any mention of any use whatsoever,"<sup>2</sup> so all clauses appropriating money to the use of the island were scored out. On October 9, the copies of the laws with the Lords' minutes of the desired alterations were sent to Sir William Jones, the Attorney-General, with the request that he would put the amendments into legal form and "return them. . . . with anything that may occur to him fit to be offered."<sup>3</sup> The same day, copies of former Governors' commissions and instructions were sent to the Lord Chancellor, who had "promised to frame and to offer something that may be convenient to the civil government."<sup>4</sup>

On the 25th, some proposals of the new Governor of Jamaica, Lord Carlisle, came up for consideration.<sup>5</sup> Carlisle was one of the nine members of the Plantation Committee specially charged with "the care and intendency of those affairs in regard they had been formerly conversant and acquainted therewith," and for many years had been interested in Jamaica, where he had a large plantation.<sup>6</sup> He was, too, in touch with Lynch, Molesworth and others interested in the island, and agreed with their views; several of his proposals are identical with those in a paper of Sir Thomas Lynch's laid before the Lords of Trade about this time.<sup>7</sup> He perhaps realised

<sup>1</sup>*Ib.* 139/5, *passim*. <sup>2</sup>*Ib.* 138/3, p. 144-5.

<sup>3</sup>*C.S.P. Col.* 1677-80. No. 423.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 425. <sup>5</sup>*Ib.* No. 457. Carlisle repeated these proposals on November 10. C.O. 391/2, p. 152.

<sup>6</sup>*A.P.C. I.* No. 1021. *C.S.P. Col.* 1661-8. No. 812.

<sup>7</sup>*Ib.* 1677-80. No. 465. Lynch, who from his frequent attendance on the Committee must have had a very good idea of what was going on, and knew that Carlisle's proposals would carry far more weight than his own, possibly persuaded him to incorporate one or two of the more vital suggestions in his paper.

better than some of his colleagues the temper of the Jamaicans, a people "generally easy to be governed, yet rather by persuasion than severity," as Littleton had written fifteen years before.<sup>1</sup> Carlisle asked that he might have the power given to Modyford and Lynch to nominate his Council; that all money should be raised in the King's name but appropriated to the public use of the island; and that a proclamation might be issued for securing to the people of Jamaica laws conformable to those of England.<sup>2</sup> The Lords of Trade were quite naturally annoyed. They had, from the first, been strongly opposed to the appropriation of public money to the use of the island, and to any measure to declare the laws of England in force in Jamaica, and they bluntly refused to re-consider their decision.<sup>3</sup> But the experience of Vaughan in Jamaica and Atkins in Barbados had shown them what a serious handicap on the Governor it was to name the Council in his commission; and, therefore, while they refused to give Carlisle discretionary power to appoint his Council, they agreed to put the name of the Councillors in the instructions, and to give the Governor power to suspend any Councillor without the consent of the Council.<sup>4</sup> From the fact that Carlisle, one

<sup>1</sup>*Id.* 1661-8. No. 812.

<sup>2</sup>Lynch proposed that the Governor should have the same power as Windsor, Modyford and himself, that no councillors should be named in the Commission; that the Governor should apply all the revenue to the use of the Island, and the Assembly be permitted to appropriate the sum it raised; that the Governor have a proclamation assuring the people they shall be governed by the laws of England. "This is what his Majesty has graciously been pleased formerly to publish and does command in every commission he has given for the government." *C.S.P. Col.* 1677-80. No. 465.

<sup>3</sup>"Their Lordships are of opinion that such a proclamation is not necessary"; "they think fit that in the laws for levying money in Jamaica there be no mention made of the public use of the Island, it being derogatory of his Majesty's just prerogative that any distrust should be conceived of his Majesty, or that the money should be otherwise employed than for the necessary support of the Government." *Id.* No. 474.

<sup>4</sup>The consent of the Council was, under the terms of Vaughan's commission, necessary before the Governor could suspend a Councillor.

of the Lords of Trade, made such proposals, it is plain that there were some members of the Committee who did not wholly approve of the policy which was now being so vigorously pursued.

On October 28, after discussing several points arising out of the proposed constitutional change, and the terms of Carlisle's commission, the Lords "noticed" that in the Revenue Act of 1672, there was no time limit; would it be possible to confirm it now? A perpetual revenue was very necessary for Jamaica. It would appear that the Lords were inclined to believe Vaughan and Lynch<sup>1</sup> when they said that the Assembly of Jamaica would be unwilling to grant money for any period longer than two years, and hoped by confirming this Act to avoid difficulty and delay; but unfortunately, the Attorney-General to whom they referred the matter did not think it could now be confirmed.<sup>2</sup>

On November 16, the Committee's report on "the present State and Government of the Island of Jamaica," was read and approved by the Privy Council, and instructions were ordered to be prepared for Carlisle accordingly. The Committee began by explaining that they considered the Crown had the right to alter the system of law-making in Jamaica, because the constitution of the colony was determined by the terms of the Governor's commission and instructions, and as the "exigency of affairs have often changed, so your Majesty has thought fit to adapt your royal orders thereunto." At present, a General Assembly of freeholders had power with the consent of the Governor and Council to make laws to be in force for two years; but having considered "the con-

<sup>1</sup>C.S.P. Col. 1677-80. Nos. 270, 465. Vaughan wrote that as the Assembly would never give enough or for longer than two years, duties should be levied in Jamaica by an Act of the English Parliament. Lynch said "If the people should not consent to the perpetuating the Revenue they raise, the Governor should then have instructions to consent to let it be only for the King's life which probably they will do after the example of England."

<sup>2</sup>C.O. 391/2, p. 145.

sequences and effects, which have been produced, or may arise from this authority derived unto the freeholders and planters, which... . have received a daily increase by the resolutions they have taken less agreeable to your Majesty's intentions," the Lords recommended that a body of laws should be sent out by Carlisle, to be laid before the Assembly to be "consented unto as laws originally coming from your Majesty," and "that [in future] the same method in legislative matters be made use of in Jamaica as in Ireland according to the form prescribed by Poyning's law." The Governor was not to call an Assembly without orders from England, though he might in an emergency ask permission to call it; but with his request he must submit the drafts of bills which he considered necessary. These drafts would be considered in England and returned "in the form wherein your Majesty shall think fit that they be enacted." The style of enacting in all laws must be changed, no money should be appropriated to the island's use but all granted to the King, the Governor should have power to suspend a Councillor without the Council's consent and no suspended Councillor should be allowed to sit in the Assembly.<sup>1</sup>

It was, then, the opinion of the Lords of Trade, that the constitutional privileges of the people of Jamaica depended entirely upon the terms of the Governor's commission; when the commission of the Governor for the time being was revoked, their privileges ceased, and the Crown had the right to alter as and when it chose the terms of a Governor's commission. It was thus unnecessary to force the Assembly of Jamaica to pass an Act like Poyning's Law to deprive itself of its legislative freedom; it was sufficient for the King to alter the powers he gave to Lord Vaughan's successor.

The Lords of Trade were, the same day, ordered "to consider of and prepare the draft of a law for establishing

<sup>1</sup>*A.P.C. I. No. 1177.* The report was signed by the Lord Chancellor Finch, Danby, Worcester, Essex, Craven, Fauconberg, Secretary Coventry with Thomas Doleman.

a perpetual revenue in Jamaica.....agreeable to that which was transmitted.....about two years since."<sup>1</sup> They accordingly spent three days<sup>2</sup> drafting a revenue bill, based on the Acts of 1672 and 1675; Lynch and Molesworth were again consulted, and finally the bill was sent to the Commissioners of Customs for their opinion. The chief changes in the draft were that no Collector was appointed, the salaries of the Governor and other officials were not enumerated but the money was granted to the King "for the better support of the government of this His Majesty's Island."<sup>3</sup> At the beginning of January 1678, they received the laws drafted by the Attorney-General according to their amendments, and approved the alterations he had made; the Commissioners of Customs did not object to the proposed Revenue Bill, so with the laws cleared out of the way, the committee was able to concentrate its attention on preparing the draft of Carlisle's commission and instructions.<sup>4</sup> At the beginning of February, "having.... finished their consideration as well upon the commission and instructions of the Earl of Carlisle as upon the laws to be transmitted to Jamaica," the Lords "agreed to report to His Majesty the most material points that have occurred to them."<sup>5</sup> On the 15th, their report was approved, and the laws prepared were ordered to be passed under the Great Seal.<sup>6</sup> In March, Carlisle received his commission and instructions, and the Acts which he was to take out with him, and to which he was authorised to give the royal assent as soon as they were accepted by the "General Assembly" in Jamaica.<sup>7</sup> Most of the forty

<sup>1</sup>*A.P.C. I.* No. 1176. Vaughan had not been able to obtain a revenue act from the Assemblies of 1677, *supra* p. 68. <sup>2</sup>November 20, 22, 29.

<sup>3</sup>*C.S.P. Col.* 1677-80. Nos. 485, 501.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 569.

<sup>5</sup>*Id.* No. 596.

<sup>6</sup>*A.P.C. I.* No. 1201. The Lords of Trade had inquired whether the laws should be passed by Order-in-Council or under the Great Seal, because up to that date, no colonial law had been approved except the Act for the 4½ per cent. in Barbados, which had been passed by Order-in-Council.

<sup>7</sup>*C.S.P. Col.* 1677-80. Nos. 618, 641, 647, 648. The commission is dated March 1, the instructions March 31. On March 22, Carlisle took the oath as Governor. *A.P.C. I.* No. 1208.



Acts were "Municipal" and were based on those passed regularly by the Assembly since 1672.<sup>1</sup> In one or two cases, two small Acts dealing with similar subjects had been combined; for example, the Act for regulating the parishes incorporated with the Jamaica Act for the same purpose, the island's Act for the maintenance of the ministry. There were two notable omissions, the Acts declaring the laws of England in force, and ascertaining the number of Assemblymen. In all, the enacting style was "by the King's Most Excellent Majesty by and with the consent of the General Assembly."<sup>2</sup>

Since September 1677, when he failed to obtain any supplies from the Assembly, Lord Vaughan had been struggling with the difficult task of governing Jamaica with an empty treasury.<sup>3</sup> His health began to fail, and in March 1678 he handed over the government to Sir Henry Morgan, and sailed to England. Carlisle arrived on July 18 1678.<sup>4</sup> He found that rumours of the changes which he was to institute had preceded him, and the people were restless and suspicious. The Council to whom he showed his instructions and the laws expressed very great dissatisfaction at the changes, and especially objected to the saving clause in the Militia Act, for the usual reason that it would make everything the Governor was commanded to do legal.<sup>5</sup> Carlisle summoned the Assembly for the beginning of September,

<sup>1</sup>E.g. Acts for the preservation of cattle, for regulating hunting, empowering Justices of the Peace to decide all cases not exceeding the value of forty shillings, etc.

<sup>2</sup>A.P.C. I. No. 1202. The acts are entered in the Plantation Register. Thirty-seven acts were approved on February 15; two more on the 22nd and one on March 27. *Ib.* Nos. 1203, 1209. C.S.P. Col. 1677-80. Nos. 600, 601, 616.

<sup>3</sup>*Supra* p. 68 C.S.P. Col. 1677-80. No. 622. Vaughan stated that he had not received one farthing of revenue since April 1677, when the Revenue Act expired.

<sup>4</sup>*Ib.* No. 770. The Lords of Trade must have shared Secretary Coventry's relief that "at last the Earl of Carlisle has taken leave of his Majesty in order to his voyage to Jamaica." *Ib.* No. 693.

<sup>5</sup>C.S.P. Col. 1677-80. No. 779.

but before it met, the people had a very good idea of the details of the "new frame" of government, and were resolved to reject it completely.

On September 2,<sup>1</sup> Carlisle opened the Assembly with what he presumably thought was a conciliatory speech. He began by saying that the laws he brought over had not been compared with those last sent by Lord Vaughan;<sup>2</sup> he assured his hearers that the King, though displeased at the omission of his name from several acts, "looked on this Island as his darling plantation," that the alteration in the enacting style of the laws was to be considered "a greater honour than any plantation yet had," and concluded with the extraordinary remark, half a threat, half a declaration of sympathy, "that the restraint that both he and [they] lie under in the new laws he brought over cannot be altered for that he had no power to do it, but should be glad if he had."<sup>3</sup> The Assembly listened in grim silence. It was not in the least impressed either by Carlisle's protestations of sympathy, or his hints to make the best of a bad situation, which it would be hopeless to attempt to improve; it was determined not even to consider passing any of the laws. It knew the strength of its position. The government could not exist indefinitely without money, and the treasury was empty; for over a year there had been no revenue from import duties, even the quit-rents were in arrears. The people as a whole were as determined as their representatives not to submit to the loss of their legislative freedom, and could be depended upon not to pay any taxes should the Governor try to levy them by proclamation or ordinance. Carlisle in fact gained nothing by his speech. The Assembly so thoroughly distrusted him that one of its first acts was

<sup>1</sup>*Ib.* No. 786, 785.

<sup>2</sup>Carlisle meant the laws of September 1677, received in England December 18, 1677. They had been considered at two meetings of the Committee which agreed that they contained nothing not already in the laws lately ordered to pass the Great Seal. C.O. 391/2, p. 135, 224.

<sup>3</sup>*Journals.* I. p. 23.

to resolve that no member should divulge what went on in the House, or what was debated, before the vote was taken, or mention the name of any speaker either before or after the vote.<sup>1</sup> This was the first sign of the fear evident throughout the session that the Governor would try, by persuasion or intimidation, to gain support for the new constitution.<sup>2</sup> The House rarely sent a committee to wait on the Governor, it preferred to attend in a body whenever he wished to discuss matters. The fear was to some extent justified, as by his own account, Carlisle laboured assiduously to win over individual members.<sup>3</sup>

The Assembly had to consider the bills laid before it, if for no better purpose than to find reasons for not passing them. So after spending two days examining the election returns, and demanding to see the original of the Governor's commission, it appointed a committee to examine the bills. The next day, September 6, the committee reported that each of the bills they had looked at "agrees except in style in everything with my Lord Vaughan's first act," save the Revenue Act, which "differs from all the former, both (sic) in preamble, rate, style, duties, officers and time."<sup>4</sup> On the 7th, the House bitterly complained because the Governor had sent for some of the bills then before it. Carlisle sent a message that it "~~had~~ bills enough to last until Wednesday, which he desired might be read," and either passed or reasons against them prepared. Immediately the Assembly appointed a committee "to draw up reasons."<sup>5</sup>

A week later the Committee presented their report, a paper that proved the rule, that what is sought diligently can generally be found. They had been ordered to find reasons why the bills should not pass, and from rather unpromising material, had managed to produce objections which made up in quantity for what they lacked

<sup>1</sup>*Journals*. I. p. 24. <sup>2</sup>Cf. the message sent by the Assembly to Carlisle on September 25, *infra* p. 88.

<sup>3</sup>*C.S.P. Col.* 1677-80. Nos. 786, 1188. <sup>4</sup>*Journals*. I. p. 26. <sup>5</sup>*C.S.P. Col.* 1677-80. No. 786.

in quality. In the Act for Foreign Attachments, the words "owers of debts" had been replaced by "owners of debts"; in the Act for confirming orders of Council "reserving" was written instead of "preserving," and "Juries" instead "Jury." Similar verbal differences appeared in all the Acts, due probably to the haste with which Carlisle's one copyist was doing his best to complete his task.<sup>1</sup> In the case of the Revenue Bill alone, was the committee able to find some more reasonable "reasons" for not accepting it. The preamble said that money had been raised by Order of the Governor and Council. This was untrue, no money was ever raised in Jamaica by order of the Governor and Council unless in Doyley's time, when the Councillors were chosen by the King's writ and consequently were the representatives of the people.<sup>2</sup> Then, though the bill declared the money to be raised was for the support of the government, it would be better if the ordinary contingencies and the salaries of the Governor, Lieutenant-Governor, and Major-General were named, otherwise the revenue might be diverted. Finally, the "perpetuity of the bill" was not "according to the practice of this island and against the interest of any young colony."<sup>3</sup>

On September 14, the House voted all the objections found for it by the committee "sufficient" but ~~refused~~ refused to submit them to the Governor when he asked for them. Three days later, it proposed to read the Revenue Bill, with the intention of "throwing that out first as a mark of disallowing the new method of government."<sup>4</sup> Carlisle sent a message asking the House to defer reading this bill until he had discussed it with the Speaker and whole House. Very unwillingly, the members consented to go; but the next morning, September 18, after throwing out the bill for regulating hunting, they turned

<sup>1</sup>*Journals*, I. pp. 28-29. *C.S.P. Col.* 1677-80. No. 796.

<sup>2</sup>The Committee had forgotten that Littleton and his nominated Council had passed a revenue act in 1663, *supra* p. 22.

<sup>3</sup>*Journals*, I. p. 29. <sup>4</sup>C.O. 138/3, p. 281

to the Revenue Bill again ; whereupon Carlisle adjourned them for a few days. 'The House met again on the 23rd, and spent the day remonstrating with the Governor for forcing an adjournment, and for violating the powers and privileges conferred on it by his commission 'by demanding papers which it had voted not to give him. Two days later, it threw out the Revenue Bill and fourteen others, and sent a message to the Governor " that the reasons sent to him, against the bills were the reasons of the whole House, so that no members ought to be distinguished or particularly sent for ; neither should [the reasons] be debated or discussed by any private member now the matter is past."<sup>1</sup>

Another week passed ; five committees were busy finding objections to the remaining twenty-five bills, and reported their discoveries to the House on October 2. It was, however, decided that some supplies must be granted, and on October 4, a one year Act for the import duties on wines, along with an Address setting forth its objections to the bills and the new constitution was sent to Carlisle. He absolutely refused to accept the Act in its present form ; but eventually, after three days of argument, and meetings of committees of the Council with committees of the Assembly, he passed it in an amended form. On October 12, he dissolved the Assembly.<sup>2</sup>

Carlisle, who had always been dubious of the changes, was the more easily convinced that it would be quite impossible to overcome the opposition of the whole colony ; and he wrote to the Lords of Trade, frankly telling them that he agreed with the Assembly that distance made their scheme unworkable. He complacently added that the difficulties he had met with were exactly those he had foreseen, but could neither avoid nor prevent, in England.<sup>3</sup> At the end of November, fearing lest his letters should have no effect, he decided

<sup>1</sup>C.S.P. Col. 1677-80. No. 807.

<sup>2</sup>C.S.P. Col. 1677-80. Nos. 807, 814, 815. <sup>3</sup>*Ib.* Nos. 814, 815, 827.

to send to England, one of the planters, a Mr. Atkinson, formerly secretary to Lynch and Vaughan, to speak for the island, and at the same time he begged that he might have permission to call another Assembly to make "municipal" laws, and to pass the "fundamental" Acts, drafts of which he now sent, and from which he would not vary in any material point.<sup>1</sup>

The first news of any opposition in Jamaica reached England at a time when the Lords of Trade, by reason of "the multiplicity of affairs in Parliament and prosecution of the Plot," had not time to deal with it.<sup>2</sup> The excitement and terror caused by the "hideous romance" of Oates and his fellow informers, were at their height. The House of Commons had opened its attack on the royal policy and ministers and impeached Danby; then came the dissolution of Parliament in January 1679, a general election, and the meeting of the new Parliament in which the Commons were even more hostile than before. So, though the Lords of Trade had by the end of February 1679, heard of Carlisle's complete failure in Jamaica, they were not able to devote any time to the affairs of that colony till early in April.<sup>3</sup> On the 2nd, they submitted to the Privy Council a report on "the state of the business in Jamaica." After reviewing the change made in the government by Carlisle's commission, they explained his reasons for desiring permission to return to the old system, and criticised the drafts of the bills

<sup>1</sup>*C.S.P. Col.* 1677-80. Nos. 827, 830, 832. Atkinson died suddenly, so Carlisle asked the Lords to hear Lynch and Philip Howard (Carlisle's brother) for they could inform them of the true state of the island.

<sup>2</sup>*Ib.* No. 912.

<sup>3</sup>Carlisle's letter of August 14, written before the Assembly met, was referred by the Council to the Lords on October 30, 1678, but not considered by them till December 4, when they agreed to report that the clause in the Militia Act to save the Governor's commission must not be omitted. Their report to this effect was read at the Council Board on February 21, 1679, but "His Majesty will consider further thereof." Carlisle's letters of October 24 and November 15, 1678, came to the Committee on February 22 and 28, 1679, respectively. *Ib.* 1677-80. Nos. 840, 881, 901. *A.P.C. I.* Nos. 1232, 1247.

he had sent, two of which were for laws they had deliberately omitted.<sup>1</sup> They were ordered to prepare instructions for Carlisle, and on the 4th, they laid their proposals before the Council. But the Council would not go as far as the Lords of Trade. It agreed that there was "no reason why any alteration should be made in the methods of making laws, according to the usage of Ireland"; but instead of ordering Carlisle, as the Lords of Trade suggested, to call another Assembly, and inform it that unless it accepted the laws offered it "the King will govern the island according to the commission formerly given to Colonel Doyley," it was content to instruct Carlisle to carry on in the meantime as best he could, to continue the laws of 1677 as they expired by proclamation, "until His Majesty's pleasure be further known," and to assure him that answers to the Assembly's objections were being prepared.<sup>2</sup>

On May 22, the Lords of Trade debated the report prepared on Jamaica, but could not come to any agreement, so presented the report unsigned.<sup>3</sup> The report dealt with the Assembly's objections one by one. The perpetual Revenue Bill was no more than the Assembly had itself passed in the time of Lynch;<sup>4</sup> the money to be raised was expressly stated to be for the support of the government, besides, "that it is not suitable to the duty and modesty of subjects to suspect your Majesty's justice and care for the government of that colony whose settlement and preservation has been most particularly carried on by your Majesty's tender regard, and by the great

<sup>1</sup>*C.S.P. Col.* 1677-80. No. 954.

<sup>2</sup>*Ib.* 960, 961, 962. *A.P.C. I.* No. 1257.

<sup>3</sup>*C.S.P. Col.* 1677-80. Nos. 1000, 1001. *A.P.C. I.* No. 1274. It would be interesting to know which of the members objected, and for what reasons, to this report. The members present were Shaftesbury—appointed to the Plantation Committee when it was reconstituted on April 22, 1679—Anglesey, Bridgewater, Sunderland and Henry Coventry. *Ib.* No. 1275.

<sup>4</sup>*Cf.* C.O. 138/3, p. 281. Carlisle wrote, "But now the Assembly say they are of a better understanding than to give the reins out of their own hands."

expense of your own treasure." To question the King's power over the Militia was presumptuous, "since it has been allowed . . . . . even by the laws of this your Kingdom that the sole government . . . . . of the Militia . . . . . is residing in your Majesty within all your Majesty's Realms and Dominions." It was not true to say that the Governor was made more absolute than before ; he was answerable, as always, to the King and bound by his commission and instructions. To the plea that the distance between Jamaica and England was too great to make the scheme workable, the answer, at best a very weak one, was that Jamaica was liable to no greater accidents than Ireland. The Assembly complained that it was deprived of its deliberative power in making laws ; but it had "endeavoured to grasp all power as well as that of a deliberative voice in making laws ;" "how far, therefore, it is fit to entrust them with a power which they have thus abused, and to which they have no pretension of right" was considered before the alteration was made. In answer to the Assembly's last objection, that the former method of making laws better secured the prerogative, the Lords drily replied "whether your Majesty's prerogative is prejudiced by the present Constitution is more the concernment of your Majesty and subject of your own care than of their consideration."

Then comes the important passage, "For as they cannot pretend to further privileges than have been granted to them either by charter, or some solemn act under your Great Seal ; so having from the first beginning of that plantation been governed by such instructions as were given by your Majesty unto your Governor, according to the power which your Majesty had originally over them and which you have by no authentic act ever yet parted with ; and having never had any other right to Assemblies than from the permission of the Governor and that only temporary and for probation, it is to be wondered how they should presume to provoke your Majesty by pretending a right to that which hath been allowed



them merely out of favour . . . . . ; when what your Majesty ordered for a temporary experiment, to see what form would best suit with the safety and interest of the Island shall be construed to be a total resignation of the power inherent in your Majesty, and a devolution of it to themselves and their wills." That paragraph states the fundamental point at issue between Jamaica and the Lords of Trade. Had or had not the King deprived himself of the power he originally possessed to establish what kind of government he chose in Jamaica ? To the Lords of Trade, a Governor's commission and instructions were not "authentic Acts" binding the King for ever. They truly said that the Assembly of Jamaica owed its existence to the Governor's commission and instructions, but were on much more doubtful ground when they said that the constitution established in 1661 was not intended to be anything but an experiment, to be altered to suit altered conditions. From what evidence is available, it would seem to have been the intention in 1661 to assure to all who went to Jamaica the same privileges as they would enjoy in other plantations.

Finally the report proposed that Carlisle should be ordered to call another Assembly, offer it the laws, and if it again refused them, should be furnished with ample power to carry on the government with his Council.<sup>1</sup> These were the identical suggestions put forward by the Lords of Trade on April 4, and rejected by the Privy Council ;<sup>2</sup> but now, on May 28, the Council accepted the recommendations of the report, unsigned though it was, and a few days later, orders in accordance with its tenour were dispatched.<sup>3</sup>

Meanwhile, Carlisle was anxiously awaiting instructions. Writing to Coventry in February 1679,<sup>4</sup> he complained that he had received only one letter from the Com-

<sup>1</sup>*A.P.C. I. No. 1274. C.S.P. Col. 1677-80. No. 1009.*

<sup>2</sup>*Supra* p. 90.

<sup>3</sup>*C.S.P. Col. 1677-80. Nos. 1011, 1012, 1014.*

<sup>4</sup>*Ib.* No. 894.

mittee since his arrival in the previous July. Rumours had, however, reached him of the troubles in England, which, though in themselves disturbing, accounted for the delay in hearing from the Lords of Trade. Apparently Carlisle was hopeful that his representations would cause the Lords to change their mind and restore the old system, but to make more certain, in April, he sent Sir Francis Watson, one of the Council, to England to lay the facts of the position in Jamaica before them.<sup>1</sup> He continued the laws that expired in April by proclamation, but others with the Impost Act expired in September.<sup>2</sup> So in July he decided to call an Assembly on his own responsibility, trusting that he would have a favourable answer to all his appeals, or at least some definite orders before the House met.<sup>3</sup> Besides a revenue grant, he hoped to obtain supplies to strengthen the island's defences, for the appearance of eight French ships of war off Port Royal had thrown the people into a panic, which was not lessened when they heard that these vessels were part of a fleet under the Comte D'Estrees, come to the West Indies for an unknown purpose.<sup>4</sup>

When on August 19, 1679, the Assembly met, Carlisle could only tell it that he had no news from England, except that the Lords of Trade were still of the same mind "that the model of Ireland was best for Jamaica."<sup>5</sup> He added that Sir Francis Watson was now in England to "negotiate the ancient system of making laws," and if he failed, he, Carlisle, would go himself in March. Meantime, he asked that the Revenue Act should be continued for eighteen months, so that if he did go to England no Assembly need be held in his absence, a reason not likely to commend itself to the House. Whatever the Assembly thought of the Governor's offer to act

<sup>1</sup>C.S.P. Col. 1677-80. No. 978. <sup>2</sup>*Ib.* No. 1030. <sup>3</sup>*Ib.* No. 1059.

<sup>4</sup>*Ib.* The people refused to believe the French explanation that the fleet was directed against the Spaniards.

<sup>5</sup>C.S.P. Col. 1677-80. Nos. 1094, 1095, 1096. Carlisle had received the orders of April 4 (cf. *supra* p. 90) before the Assembly met.

as its intermediary in England, it was not willing to grant supplies for more than six months ; in the bill which it sent up on the 26th, it had nominated a collector, and provided for the accounts to be rendered to it. Moreover, it tacked to it, an act for regulating fees, and would not alter it in spite of the Governor's arguments and pleas.<sup>1</sup> A few days before, on August 22, on hearing of the Receiver-General's refusal to submit his accounts for its inspection, it had seized the opportunity of restating its claim to control the raising and spending of all public money. It was resolved *nemine contradicente* "that it was and is their undoubted and inherent right, that as all bills for money ought and do arise in this House, so they ought to appoint the disposal of it, and receive and examine all the accounts concerning the same."<sup>2</sup> This is the first time the Assembly had claimed that in representative House lay the sole right of originating bills of supply, and the resolution is all the more interesting, following as it does so closely in point of time, on the similar resolution of the House of Commons.<sup>3</sup>

On August 26, Carlisle received the Lords' report of May 28, and the orders issued on it. He immediately read them to the Council, and the next morning, at its own request, to the Assembly, which was considerably surprised at their tenour. It had placed too great confidence in Carlisle's efforts, and on the effect that the complete rejection of all the bills sent to it might be supposed to have on the Lords of Trade. It was, in fact, so unprepared that in order to gain time to organise opposition, it requested the Governor to prorogue it for two months, for "having entered into some discourse

<sup>1</sup>*Ib.* Nos. 1097, 1103.

<sup>2</sup>*C.S.P. Col.* 1677-80. Nos. 1097, 1099, 1103.

<sup>3</sup>*Commons Journal.* IX. 590. "That all Aids and Supplies and Aids to His Majesty in Parliament, are the sole Gift of the Commons ; and that it is the undoubted and sole right of the Commons, to direct limit and appoint, in such Bills, the Ends, purpose, considerations, conditions, limitations and qualifications of such Grants ; which ought not to be changed or altered by the House of Lords."

about the orders. . . . . from His Majesty [it thought] they require great consideration " which it was unable to give at that time, " being under apprehension of danger from the French."<sup>1</sup> Carlisle readily agreed and prorogued the House till October 28. He explained his action to the Lords of Trade in a letter which gives a good idea of the curiously ambiguous part he took throughout his years in Jamaica ; on the one hand, protesting his eagerness to obey his instructions, although he disapproved of them ; on the other, assuring the planters of his entire disapproval of the new system, and of his earnest efforts to have it altered. He said that he had prorogued the Assembly, for two months, hoping " that in that time, they would fall off of their heat and upon recollection better be-think themselves of their duties and allegiance, and on my offering them again the laws, which I propose to do on their first meeting, better demonstrate their obedience by consenting to them." He knew perfectly well, as his next sentence shows that these were mere words. From what he could discover from the leading planters, the people were as determined as ever to resist ; " They aver that they will submit to wear, but never consent to make, chains (as they term this frame of government) for their posterities." To Coventry he wrote that there was some talk of sending a petition to the House of Commons, who, it was reported, were about to pass an Act to punish any levying of money except by consent of Parliament. If the Act included the plantations, and if he, in obedience to his orders, continued the Revenue Act by proclamation, his position would be serious ; therefore he begged for " such clear and positive orders," as might justify the Council and himself.<sup>2</sup> An Address to the House of Commons was never carried. That such a thing was suggested is startling proof of the length to which the Jamaicans talked of going ; for to petition the House of Commons was to ignore the Crown, a revolu-

<sup>1</sup>*C.S.P. Col.* 1677-80. Nos. 1117, 1104, 1105. Long. I. p. 199.

<sup>2</sup>*C.S.P. Col.* 1677-80. Nos. 1117, 1118.

tionary innovation in the relations between England and the colonies.

Carlisle's "conjectures [proved] to be no vain prophecy."<sup>1</sup> When the House re-assembled on October 28, he went with the Council to its place of meeting, again read the orders from England, and urged it to buy the King's favour by accepting the bills he now offered them. Then, because the former Clerk had refused to keep him informed of what went on in the House, and being no longer content to remain a stranger to their proceedings, he appointed a Clerk of his own choosing.<sup>2</sup> Naturally the Assembly was highly incensed, it sent a message to Carlisle that his coming to the House was a breach of privilege, and very unwillingly accepted the new Clerk.<sup>3</sup> It then settled down to the farce of considering the laws, and rejected them one by one. On November 14, having heard that all the laws had been thrown out, Carlisle, though he had no authority to do so, drafted an indefinite Revenue Act of his own and sent it to the Assembly. It was of course promptly rejected, as not arising in the Assembly, and when Carlisle sent for the Speaker and Assembly to explain why his bill had been refused, he was presented with an Address to the King, "the Speaker," as he sarcastically told the Lords of Trade, "contending to give it its true accepts by reading it himself."<sup>4</sup> A week later, he felt compelled to reject the Revenue Bill sent him from the Assembly; but succeeded in persuading it to raise £1,300 for the forts. It would not, however, trust him with it, but arranged that the money should be paid to Captain Wilson, one of its members, to be paid by him to persons specified in the Act.<sup>5</sup> By the end of November, it was busily

<sup>1</sup>*C.S.P. Col.* 1677-80. No. 1188.

<sup>2</sup>*ib.* No. 1129. Twice in the Assembly of 1678, Carlisle and the House had quarrelled over the refusal of the Clerk to tell the Governor what went on in the House, and Carlisle threatened then to lay the Clerk by the heels, and put in another next morning. *ib.* No. 786.

<sup>3</sup>*Journals.* I. p. 47.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 1188. <sup>5</sup>*Journals.* I. pp. 55-56.

engaged on another Revenue Bill, eventually accepted by Carlisle, to continue the import duties for twelve months from the following March.<sup>1</sup>

At the same time, Carlisle had been having increasing difficulty in dealing with his Council. Like the Assembly, the Council disliked the new model, both because it considered it impracticable and unjust, and because, there being no mention of the Council in the new enacting style, the Assembly refused to allow it any share in legislation.<sup>2</sup> The leader of the opposition in the Council and Assembly was, as Carlisle had realised from the first, Samuel Long.<sup>3</sup> In 1678, he with two other members of the Council had very unwillingly agreed to answer in the affirmative a question put to all the Council by Carlisle ; "Do you submit and consent to this form of government ?" When during the October session of 1679, the Council were debating the terms of an Address to the King, one member suggested that by humility and obedience they might prevail with the King to grant at any rate part of their wishes, and that they ought to be content with one concession at a time, Long replied with "most unbecoming heat" that "he desired nothing but his rights as an Englishman . . . . he wanted no half measures but to be governed as formerly and the new model to be laid aside." As he refused to sign the Council's Address, and admitted that he had assisted to draft the Assembly's Address, Carlisle suspended him from the Council and dismissed him from the office of Chief Justice.<sup>4</sup> These measures had, he said, a great effect ; the Assembly conducted itself more soberly, granted the money for the forts and passed the one year's revenue bill.<sup>5</sup> He wrote that on the advice of the Council, he had decided to send Long and six of the Assembly "to plead their own cause before the King and Privy Council."<sup>6</sup>

In March 1680, Sir Francis Watson arrived from England. He brought, without the knowledge of the

<sup>1</sup>*C.S.P. Col.* 1677-80. No. 1199 <sup>2</sup>*Id.* No. 1361. <sup>3</sup>*Id.* Nos. 794, 1512.

<sup>4</sup>*C.S.P. Col.* 1677-80. Nos. 1188, 1189, 1302, 1512. Long was suspended about the middle of November. <sup>5</sup>*Id.* No. 1199. <sup>6</sup>*Id.* No. 1188.

Lords of Trade, verbal permission from the King for Carlisle to return to England. Carlisle eagerly availed himself of it, for he was thoroughly weary of his difficult position. He could do nothing with the Assembly, and the last orders of the Lords of Trade had shown him that they did not yet realise the state of affairs with which he had to deal. He sailed in May, taking Long and Beeston, the late Speaker of the Assembly, with him, and leaving Sir Henry Morgan to carry on the government.<sup>1</sup>

Up to the end of 1679, there is no doubt that the Lords of Trade as a whole were convinced of the strict legality of their action in regard to Jamaica. Finch, the Lord Chancellor, who in 1677, was a most active member of the Plantation Committee had approved of the plan ; the Attorney-General had given his opinion, in the question of the interloping ship, that the people of Jamaica held all their privileges by the grant of the Crown. It was surely unnecessary to seek any other opinion. They apparently never doubted that they would succeed in carrying through the constitutional change, although Lynch, Molesworth and Carlisle must have told them it would cause great discontent, even opposition. Their report of May 28, 1679, proved that the news of the Assembly's first refusal to accept the new constitution had not weakened their determination or their conviction that they had legal right on their side. Knowing, as they did, that Carlisle had always disliked the scheme, they probably discredited his accounts of the strength of the opposition, but by December 1679, his letters had so far influenced them that they thought it well to have fuller information on the whole subject.

At two meetings on October 9 and November 13, they had considered the affairs of Jamaica, had heard what Sir Francis Watson could tell of the state of the island, had read and sharply criticised the impost bill passed by Carlisle in September 1678 ; but they felt

<sup>1</sup>C.S.P. Col. 1677-80. No. 1344, 1361, 1370. He had received their letter of January 16, *see infra* p. 101.

that it would on the whole be wiser to wait until they heard the result of the Assembly called for August 19.<sup>1</sup> On December 15, after reading Carlisle's letters of September, written just after he had prorogued the Assembly for two months, and in which he assured them that there was little chance of his success, the Lords decided to consult the two former Governors, Lord Vaughan and Sir Thomas Lynch, on the present state of the colony, and the system of government since 1660. On December 22, Vaughan and Lynch attended the Committee to explain more fully the accounts of the government of Jamaica, which, in obedience to the Lords' commands, they had handed in.<sup>2</sup> Lynch had also submitted a copy of the royal proclamation issued by Lord Windsor, in Barbados in 1662,<sup>3</sup> the first apparently the Lords had seen or heard of it.

At the end of his "Brief account of the Government of Jamaica," Lynch gave various reasons why the people disliked the new system so strongly. "Being English, they think they had a right to be governed as such, and to have their liberties and properties secured by the laws of England, or others of their own making." They believe that the King granted them these rights in his proclamation in Lord Windsor's time, and confirmed them by his commissions to the Governors since. "All other colonies have, and always have had Assemblies and power to originate laws." He added that he was sure the Assembly would again reject the laws, and that he did not think the Council would agree to continue the Revenue Act by proclamation. Even if it did agree, "It will not be without process," for judges and juries would constantly decide against the collectors, and orders from England would have no effect.<sup>4</sup>

<sup>1</sup>*C.S.P. Col.* 1677-80. Nos. 1140, 1141, 1182. They also decided that the latitude given to Governors to call Assemblies "for answering some very urgent necessity" was, as Carlisle's action in summoning the Assembly for August 19 proved, too great and in future they should have permission to call Assemblies in cases of rebellion and invasion only.

<sup>2</sup>*Ib.* Nos. 1227, 1234, 1239. <sup>3</sup>*Supra* p. 21.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 1234.



Lynch seems to have impressed the Lords, for on reading the draft for the Militia Act, which Carlisle had taken out, they decided to send it to the Attorney-General requesting him to explain the clause which had alarmed the Assembly, "inasmuch as it gives the Governor no greater powers than those vested in the King by Act of Parliament in England."<sup>1</sup> This was the first time they had considered making any modification of any kind to meet the island's objections, but at the same time, they had no intention of restoring the former system. On the contrary, they began to consider how, if the need arose, they might force the colony to submit. The Assembly's aim was clear; it intended to refuse supplies, except on its own terms, and for very short periods, confident that the Governor would fail to raise any money by his own, or the Council's order; and that eventually lack of money to support the ordinary charges of the government would bring about such a state of affairs that to prevent ruin, the Crown would be compelled to restore it its former powers. Now, if the Lords could by some lawful means, apart from the Assembly's grant, secure an adequate revenue in Jamaica, for the support of the government, they could dispense with the Assembly altogether. They therefore asked the Attorney-General, besides explaining the clause in the Militia Act, to state whether, in its opinion, there was any law in England to prevent the Crown levying a powder tax on all ships in Jamaica according to the "existing laws and ancient usage of the island."<sup>2</sup> The answer was apparently unfavourable; for the Lords did not do anything further in the matter. But they did not give up the idea of obtaining a revenue independently of the Assembly.

On January 13, 1680, the Lords questioned several Jamaica merchants, whom they had summoned to attend, as to the latest news from the island and the conditions prevailing there. The merchants painted a gloomy

<sup>1</sup>C.S.P. Col. 1677-80. No. 1240 <sup>2</sup>16.

picture of the unrest and discontent, with the consequent ill-effects on trade and planting. When the Lords carefully explained why the change had been made, they answered they hoped a difference would be made between Jamaica and Ireland; they agreed that perhaps the people would be content to be governed by the laws of England and a Governor and Council only, if they could not have their former liberty restored. They then withdrew. The Lords decided to wait until they heard what had happened in the October session of the Assembly, but in the meantime sent a sharp letter reprimanding Carlisle for passing such an Act as the one year's Impost Act, and forbidding him to pass any Act for the revenue except that he had taken out with him.<sup>1</sup>

On March 5,<sup>2</sup> came the news that the Assembly had a second time refused the laws. The Lords of Trade read Carlisle's letter of November 23,<sup>3</sup> and approved of his appointing the Clerk of the Assembly and of his suspending Long from the Council. They then read the Assembly's Address, in which they observed that there were "many mistakes and falsities." The Assembly said that civil government only began in Sir Thomas Modyford's time, "whereas it is certain that Colonel Doyley soon after the King's Restoration governed by the civil power;" it said that the erasure of the King's name from the Revenue Act of 1675 was the work of the Council, that no indefinite Revenue Act had been passed in Lynch's time, both of which statements were plainly false;<sup>4</sup> it spoke of misapplication of public money, but gave no proof that there had ever been such misapplication. These glaring mistakes quite deserved the remark "that upon the whole matter [the Assembly has] reason

<sup>1</sup>*C.S.P. Col.* 1677-80. Nos. 1259, 1260. January 16. <sup>2</sup>*Ib.* No. 1318. <sup>3</sup>*Ib.* No. 1188.

<sup>4</sup>The Act passed in 1672 had no time limit. C.O. 139/2. Vaughan told the Lords of Trade that the erasure of the King's name in the Act of 1675 was in Long's handwriting, *C.S.P.* 1677-80, No. 1319, and Long when charged with it, said what he had done, he had done as Speaker of the Assembly. *Ib.* No. 1512.

to beg His Majesty's pardon for all [its] errors and mistakes ;" but the Lords did not condescend to notice the point that the difference in distance between England and Ireland and England and Jamaica, made a system suitable in the one case, utterly impracticable in the other.<sup>1</sup>

There was now a complete deadlock ; twice the Assembly had been ordered to pass the Acts sent from England and twice it had refused. Clearly some fresh method, and some new arguments must be found. A week later, on March 11, the Lords of Trade addressed four questions to the Attorney and Solicitor-General. (1) "Have the King's subjects in Jamaica a right to the laws of England as Englishmen, or in virtue of the King's proclamation, or otherwise ? (2) Are not those subjects in Jamaica, who claim to be governed by the laws of England, bound as well by such laws as are beneficial to the King (*e.g.* subsidies) as by such as tend only to the benefit of the subject ? (3) Are not the subsidies of Tonnage and Poundage upon goods lawfully carried to Jamaica payable by law by the King's subjects that inhabit it, or that trade thither by virtue of the Acts of Tonnage and Poundage or other acts made in England ? (4) If wine or other goods be brought into England for re-export and rebate allowed thereon according to law, and the same be afterwards carried to Jamaica, shall they not there be liable to the full tonnage and poundage which should have been paid if they had been consumed in England with the deduction of the sum not rebated in England ?" <sup>2</sup> The Lords of Trade had returned to the idea of procuring a revenue without the Assembly's consent, but in a perfectly lawful manner. Their idea was ingenious. The people of Jamaica claimed the laws of England ; if they had a right to them, then let them have the laws of England, but the laws, the whole of the laws and nothing but the laws. The people would secure the laws to protect their lives and liberties, but the Lords of Trade

<sup>1</sup>*Ib.* Nos. 1188<sup>u</sup>. 1318.

<sup>2</sup>*C.S.P. Col.* 1677-80. Nos. 1322, 1323.

would have at their disposal ample supplies to pay for the upkeep of the government.

On April 27, the Attorney- and Solicitor-General reported that the questions were of "such difficulty as to deserve the opinion of the judges," but the Attorney-General added that in his opinion, "the people of Jamaica have no right to be governed by the laws of England, but by such laws as are made there and established by His Majesty's authority."<sup>1</sup> On June 23, an Order-in-Council directed the Attorney- and Solicitor-General to confer with the judges on the following question which had been substituted for the first two quoted above "whether by letter, proclamation or commissions annexed, His Majesty hath excluded himself from the power of establishing laws in Jamaica, it being a conquered country and all laws settled by authority there being now expired."<sup>2</sup> No answer to this is to be found among the papers of the Lords of Trade. Nothing more was done until the beginning of September. The Lords were awaiting either the answer of the judges, or, if they had received that, Carlisle's arrival from Jamaica.<sup>3</sup>

On September 16, Long appeared before the Committee to answer the charges preferred against him by Carlisle.<sup>4</sup> Carlisle described how Long had openly shown his dislike for the changes in the government, how in spite of his promise to keep his opinions to himself, he had inspired and organised the opposition of Council and Assembly; and strengthened his argument by showing how Long had, throughout his life in Jamaica, worked to lessen the power of the Crown. He, as Speaker of the Assembly, had erased the King's name from the Revenue Act of 1675, and on being charged with

<sup>1</sup>*C.S.P. Col.* 1677-80. Nos. 1346, 1347. Only the first two questions were referred to the judges as the Solicitor-General opined that the word Dominion in the Acts of Tonnage and Poundage did not include the plantations.

<sup>2</sup>*Ib.* Nos. 1405, 1406. <sup>3</sup>*Ib.* No. 1344. Carlisle's letter of April 23, announcing his decision to return was received on July 21.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 1509.

doing so, replied that if he had, it was no crime ; he had issued the Habeas Corpus for the condemned pirate Browne and persuaded the Assembly to vote for a suspension of his execution.<sup>1</sup> Long flatly denied these charges, and to quote the angry Secretary, Jenkins, justified "his opposing the new model, but with such arguments as mutinies and seditions used to be maintained withal." The rest of the Committee may have shared Sir Leoline's opinion, but they finally thought it wiser to release Long from his bond, and to furnish him with a copy of the charges against him.<sup>2</sup>

On October 12, Carlisle reminded the Lords that the Revenue Act would expire in March, and that Morgan would be placed in a very difficult position, unless the order of January 16, forbidding the Governor to pass any revenue bill except that sent out in 1678, was rescinded. The Lords resolved "to meet again in this business," and ordered Long and the other planters to attend.<sup>3</sup> Two days later, October 14, the King himself was present at the lengthy debate on Jamaica.<sup>4</sup> Carlisle produced from the Jamaica Council Books, the Revenue Acts passed by Dooley and Littleton with their Councils, both of which were indefinite. The planters were called in, and asked to state their objections to a perpetual Revenue Act. "They make answer that they have no other way to make their aggrievances known to the King and to have them redressed than by the dependence of the Governor upon the Assembly which is preserved by passing temporary bills of revenue ;" once a perpetual Act was passed, no more Assemblies would be called. Carlisle replied that was nonsense ; the charges of the government were such that the duty on liquors would never be sufficient. It was then suggested that if the Assembly would pass the Revenue Act, "indefinite" the King might be induced to confirm the other Acts "indefinite" also. The planters then withdrew and the Lords continued

<sup>1</sup>*Ib.* No. 1512. <sup>2</sup>*Ib.* Nos. 1511, 1517.

<sup>3</sup>*C.S.P. Col.* 1677-80. No. 1538. <sup>4</sup>*Ib.* No. 1540.

their debate. Finally they propounded two questions to Chief Justice North, who was there added to the Committee. (1) "Whether the King by his proclamation published during Lord Windsor's government, his letter of January 15, 1672-3, or any other Act appearing by the Laws of England or of Jamaica, or by any commissions or instructions to his Governors, had divested himself of the power he formerly had to alter the form of government in Jamaica? (2) Whether any Act of the Assembly of Jamaica or any other Act of the King's or of his Governor's had totally repealed the Acts made by Colonel Doyley and Sir Charles Littleton for raising Public Revenue, or whether they are still in force?"<sup>1</sup> Four days later the Lords asked North to hasten with his reply and to consult with the other Judges.<sup>2</sup> On the 20th, his opinion was read, but only the substance of his answer to the second query is entered in the Journals of the Lords.<sup>3</sup> It was to the effect that the Act passed by Sir Charles Littleton in 1663-4 was still in force. The planters objected that all laws made by Sir Charles Littleton were declared void by an Act of Modyford's Assembly; that in any case, the laws he could make were limited under Windsor's commission to a period of two years; "that neither the law made by Sir Charles Littleton and his Council, nor the other made by Colonel Doyley and his Council are now in force, since they had no express power to make laws by their Councils, and that they as Englishmen ought not to be bound by any laws to which they have not given their consent."<sup>4</sup> The first two objections apply to the Revenue Acts of the Assembly of January 1664, and are perfectly well founded. The third is very weak; the Jamaicans showed they felt dubious about it by adding the sentence about their

<sup>1</sup>*C.S.P. Col.* 1677-80. No. 1540. <sup>2</sup>*Ib.* No. 1546.

<sup>3</sup>*Ib.* No. 1550. The entry in the Journals of the Lords of Trade states that the Lords read North's opinion on the first question, but does not state what it was.

<sup>4</sup>*C.S.P. Col.* 1677-80. No. 1551.

rights as Englishmen to consent to all laws. Even that principle could not be an objection to Doyley's Act, for they had themselves said that no money had ever been raised in the island by Governor and Council except in Doyley's time when the Council was elected and so was representative of the people.<sup>1</sup> Therefore they had consented to Doyley's Act as much as to any other passed since. These objections were sent to North with a request that he would attend the Committee at three the next afternoon to meet the Jamaicans. At that afternoon meeting, the Lords very reluctantly came to the conclusion that they must give way. After debating Windsor's proclamation, discussing whether the Revenue Acts of Doyley and Littleton were perpetual, and whether, if they were, they had been annulled by any subsequent proclamation or Act, they listened to the planters, and finally told them, "to wait on Lord Chief Justice North to explain their chief wants to him, whereby they may be induced to pass an Act for the revenue to the end that matters may be brought to an accommodation."<sup>2</sup> On the 27th, North reported that "the gentlemen of Jamaica were prepared to grant a perpetual bill for the payment of the Governor and another for seven years for the other charges of the government, provided that they be restored to their ancient form of passing laws, and may be assured of such of the laws of England as concern their liberty and property." The Lords discussed this offer, but came to no decision; they resolved, however "to meet *de die in diem* till the question be settled."<sup>3</sup> The following day, "after consideration of divers documents, their Lordships agree that the present method of making laws in Barbados as laid down in Sir R. Dutton's Commission, be applied to Jamaica."<sup>4</sup> Despite the wording, intended to save the face of the Committee, the decision restored to Jamaica its former constitution.

<sup>1</sup>*Supra* p. 87. <sup>2</sup>*C.S.P. Col.* 1677-80. No. 1551.

<sup>3</sup>*Ib.* No. 1559. <sup>4</sup>*Ib.* No. 1561.

The victory of Jamaica has been usually regarded as a victory of right over might, a vindication of the liberties of the people against the tyranny of the Crown. "The barons of Runnymede, the warriors of Marston Moor" writes one enthusiast, "had their true descendants in the Jamaica legislature of that day."<sup>1</sup> As the planters' aim was "to reflect with a true filial resemblance the beauteous countenance of [English] liberty," nothing could prevail against them, "no threats could frighten, no bribes could corrupt, nor arguments persuade them to consent to laws that would enslave their posterity."<sup>2</sup>

That is all very true—as far as it goes. But the stubborn resistance of the Assembly was not the chief cause of the Lords of Trade's surrender. Jamaica succeeded because the law officers could not find legal support for the policy of the Crown. It was not until the spring of 1680, three years after they first decided to reform the constitution of Jamaica, that the Lords of Trade first asked the Attorney- and Solicitor-General whether the King had deprived himself of the power to do so. The question was thrice repeated, but none of the answers were preserved. It is, therefore, impossible to know their content, but the fact that the answers are not to be found is an argument for the theory that they were unfavourable to the Crown. Had the Lords of Trade received the slightest legal justification for their policy, they would certainly have produced it to confute the planters' arguments. Further, there are two remarks of the Attorney-General which suggest that the answers were unfavourable. In 1676, in giving his opinion in the case of the interloping ship, after stating that the rights of the people of Jamaica depended on a grant of the King, he added, "until it shall be seen what the King has granted, I do forbear to give further direction ;" and in 1680, he said that the people of Jamaica had no right to be governed by the laws of England, but by "laws

<sup>1</sup>W. J. Gardner. *A History of Jamaica*. (1909). p. 66.

<sup>2</sup>Long. I. p. 11.



made there.”<sup>1</sup> Were laws drafted and approved in England and merely presented to the Assembly to be accepted or rejected to be considered made there in the full sense of the words? Finally, at the very time when the Lords of Trade restored the old system of law-making to Jamaica, they were preparing to revoke the charters of the New England colonies; and in spite of bitter opposition, the charters were eventually revoked. If the Lords of Trade could overcome the resistance of Massachusetts Bay, with its long tradition of independence, and a population at least three or four times that of Jamaica, they could certainly have compelled Jamaica to submit, had they had against it as good a legal case as against Massachusetts. Macaulay, describing the policy of the Crown after 1681, says: “if the Court had since the dissolution (of Parliament) done some harsh things, still these things were in strict conformity with the letter of the law. . . . If the King had prosecuted his opponents, he had prosecuted them according to the proper forms, and before the proper tribunals. . . . If the privileges of the City of London were attacked, they were attacked, not by military violence or any disputable exercise of the prerogative but according to the regular practice of Westminster Hall.”<sup>2</sup> What is true of the royal policy in England, is true of the royal policy towards the colonies. Whatever the Lords of Trade did was according to the forms of law and founded on the law.

There is a great deal to be said for the Lords of Trade in their attempt to limit the power of the Assembly of Jamaica, which had shown all the worst characteristics of a colonial legislature, legislating for its own interests, refusing to vote supplies urgently needed for the defence of the people it represented, attempting to encroach on the executive in every possible way. And the Lords, in preparing the laws to be sent by Carlisle, had not shown themselves careless of, or indifferent to, purely island

<sup>1</sup>*Supra*, pp. 14, note 1, 103.

<sup>2</sup>Macaulay, *History of England*, ed. C. H. Firth. (1913-15). I. p. 254.

interests and customs. But to their plan of governing Jamaica under a system like that of Ireland, there was, quite apart from the legal aspect, one insuperable objection. Distance made it unworkable. The Lords refused to admit that distance made any difference, though their experience in these three years ought to have shown them their error. By the most optimistic reckoning, it was four to six months before a Governor could get an answer to his letters, and in that time conditions had generally so altered that orders were out of date and useless.

The principle at issue in the struggle between the Lords of Trade and Jamaica was fought out a hundred years later in the law courts. The island of Grenada, like Jamaica a conquest, was promised by royal proclamation and the commission to its Governor, an Assembly, which, with the consent of the Governor and Council, would have power to make laws and levy money. A later proclamation extended to the island the  $4\frac{1}{2}$  per cent. duty levied in Barbados and the Leeward Islands, thus taxing the people without the consent of the Assembly. The Crown's right to levy this tax was questioned in the law courts, and Mansfield gave judgement<sup>1</sup> against the Crown, for though the King "has a legislative power over a conquered colony, limited to him by the constitution," he had by his proclamations and commission to the Governor "immediately and irrevocably granted to all who were or should become inhabitants in the island of Grenada . . . . that the subordinate legislation over the island should be exercised by an Assembly, with the consent of the Governor and Council." What Grenada established by a judgement of the courts, Jamaica, after a three years' fight, established for its own benefit; the Crown cannot withdraw the subordinate legislative power it has once granted to the Governor, Council and Assembly of a colony.

<sup>1</sup>Campbell v. Hall, 1774. Lord Mansfield's judgement printed in W. P. M. Kennedy, *Constitutional Documents of Canada*.

## CHAPTER V.

### THE TWENTY-ONE YEARS' REVENUE ACT. 1680-1684.

The Lords of Trade had retreated from what they found was an untenable position, and had restored to Jamaica its former constitution. But they were not by any means routed, as the jubilant colonists thought. The Assembly must regain its legislative powers, but they did not intend to allow it to exercise those powers as it had done previously, to the detriment of the prerogative. And to alter the constitution of Jamaica had been only a part, though the principal part of their plan. A subsidiary object had been to obtain a perpetual revenue for the maintenance of the colonial Government. This they did not give up ; to secure a permanent revenue in Jamaica now became their primary aim.<sup>1</sup>

It was on October 28, 1680, that the Lords of Trade resolved to restore the former system of government to Jamaica, and in order that the Assembly might " more readily be induced to grant a revenue," they agreed to recommend that " the King's quit-rents and the tax on wine licences, as well as all existing levies, should be appropriated solely to the support of the Government."<sup>2</sup> This was a further surrender. When, two days later, the Jamaicans were informed of the Lords' decision, they were naturally triumphant,<sup>3</sup> and great must have been the rejoicing at the Jamaica coffee house that day.<sup>4</sup>

The Lords now lost no time. Though the planters assured them that the Assembly would never grant a perpetual revenue, that the utmost it would agree to would be an indefinite Act for the Governor's salary and another for seven years for other charges, they decided to press for a perpetual Revenue Act. On Novem-

<sup>1</sup>To secure a permanent revenue for the support of the governments in the plantations became about this time part of the general policy of the Lords of Trade. Cf. Higham, *Development of the Leeward Islands*, pp. 226, 231-2. Flippin, *Royal Government of Virginia*, pp. 230-2.

<sup>2</sup>C.8.P. Col. 1677-80. No. 1561. <sup>3</sup>*Ib.* No. 1562. <sup>4</sup>Penson, *Colonial Agents*, p. 181.

ber 1 and 2, they read and amended the Acts for the revenue and militia sent out with Carlisle in 1678. In both the enacting style was altered to Governor, Council and Assembly; in the Revenue Act an appropriation clause was inserted, and in the Militia Act, the clause to save the Governor's power under his commission was altered with the consent of the planters.<sup>1</sup> On November 3, new powers and instructions were issued to Carlisle. He was authorised "from time to time as need shall require," to call "General Assemblies of the freeholders and planters within the said island in manner and form as is now practised in Jamaica," and with the Council and Assembly to make laws agreeable to the laws of England. All laws must be transmitted to England within three months, and the Crown reserved the right to disallow them.

He received two sets of instructions, formal and private. In his formal instructions, he was ordered to try to procure an Act for a perpetual revenue, according to the terms of the draft now given to him, and to permit no material variations from it. While he might tell the Assembly that all money including the quit-rents might be appropriated to the public use, and that the public accounts would be submitted for its inspection, he was not to allow any public money to be issued except on his warrant, he was not to allow any exemption from customs dues to be given to Jamaica ships, and he was not to pass any laws which lessened the revenue. All laws must be without a time limit, and no law once enacted might be re-enacted, except on very urgent occasions and with express consent of the Crown. In any law passed to define the boundaries of parishes, a clause must be inserted to save the jurisdiction of the Admiralty. In his private instructions, he was told that, if he could not secure an Act for a perpetual revenue, he might accept a temporary one, but in no circumstances must it be for less than seven years. Though appropriation of the

<sup>1</sup>C.S.P. Col. 1677-80. Nos. 1566, 1567, 1568.

revenue was permitted, the salaries of the Governor, Deputy-Governor, and Major-General were not to be specified in the Act. The Lords of Trade meant to have a revenue bill passed on their own terms.<sup>1</sup> The same determination is apparent in the memorandum they prepared at the beginning of December for the guidance of Sir Henry Morgan in passing the bills sent to him. He was to insist on the amendments made in the bills for the militia, regulating the law courts and ascertaining the quit-rents being accepted in the form agreed on by the Lords in consultation with the law officers and the planters.<sup>2</sup>

Long and his friends considered that they could not have a better opportunity than the present to remedy all the evils in the government of Jamaica. They evidently thought that having defeated the Lords on one question, they would be granted whatever they chose to demand, and therefore hastened to lay before the Committee two sets of proposals.<sup>3</sup> The Lords must have opened their eyes in indignant surprise at the patronising tone of their first paper. "The Lords," it said, "have made great progress with the well settling of Jamaica," so the planters hoped that what was still necessary would be favourably considered. First of all, they suggested that a clause be inserted in the perpetual Revenue Act to assure to the people of Jamaica that they should always be governed by laws made by the Governor, Council and Assembly. Then, "it is worthy of consideration" whether some of the Council or Judges of the Supreme Courts should not assist the Governor in his functions of Chancellor, Ordinary and Vice-Admiral, and in exercising the prerogative of mercy. There can be little doubt that Long originated that proposal. Then it was proposed that the clauses in

<sup>1</sup>*C.S.P. Col.* 1677-80. Nos. 1570, 1571, 1572.

<sup>2</sup>*Ib.* No. 1612. Carisle had apparently no intention of returning to Jamaica.

<sup>3</sup>*C.S.P. Col.* 1677-80. Nos. 1575, 1588. November 4 and 12.

the commission and instructions which forbade a suspended Councillor to sit in the Assembly, and gave the Governor power to transport men from the island, should be amended. The Lords firmly refused to accept any of these suggestions. To some of the others, which concerned the island alone, such as raising money to pay agents to solicit the affairs of Jamaica in London, they returned a favourable answer.

Sir Henry Morgan received the new powers and instructions at the beginning of February 1681, and cheerfully summoned the Assembly to meet in March, when the Impost Act expired.<sup>1</sup> There is something amusing and yet pathetic in Sir Henry's efforts to play the model Governor. He was so anxious to obey orders, so certain that what he had done would please, even when, as was frequently the case, he had acted in direct contradiction of his orders.

The Assembly met on March 18, in very good spirits, and evidently of the same opinion as the planters in London, that it had completely defeated the Lords of Trade. To hear that the Crown demanded a perpetual revenue was something of a shock.<sup>2</sup> The Assembly quickly came to the conclusion that it would scarcely be prudent to deal with the revenue first. The wiser policy was to use its regained legislative freedom to pass such Acts as it considered necessary, and then come to the question of the revenue. Accordingly, it sat at intervals through the spring and summer and had passed about twenty local Acts by the beginning of September.<sup>3</sup> It had made it plain from the first that it would not consider any Act to perpetuate the revenue. Morgan then fell back on his private instructions, but the opposition to a seven years' Act was unanimous until he told some of the Assemblymen privately that he could not make any further concession. Yet early in September, a two years' revenue bill was introduced, and was only thrown out after

<sup>1</sup>*C.S.P. Col.* 1681-5. Nos. 16, 17. <sup>2</sup>*Ib.* Nos. 52, 115, 116. *Journals.* I. p. 57. <sup>3</sup>*C.S.P. Col.* 1681-5. Nos. 160, 215.

Morgan had vigorously remonstrated with the Assembly.<sup>1</sup> Finally, on October 28, a Revenue Act for seven years was passed, but with all the other laws tacked to it.<sup>2</sup>

This Act was an extraordinary document. That the Assembly even thought it would be accepted, as it confidently did,<sup>3</sup> is ample evidence of its belief that it could now gain what it pleased to demand from the Crown. It had, it said "spent a great deal of time and money in the making of laws, some of which were by order sent home for His Majesty's confirmation, but this place being a great distance from the Court, the ministers taken up with affairs of greater importance, and the poverty of the people such as not able to maintain a solicitor constantly to attend it" none of the laws had been confirmed. The delay "hath brought the whole Government under great and unavoidable difficulties how to act, for prevention of which inconvenience for the future, they could not think upon a more proper expedient in their judgment than the affixing of this body of laws to the revenue bill, and the two years limited for their ratification they think a sufficient time for the signification of His Majesty's pleasure." That by this means, it would procure the confirmation of the laws was, as it bluntly told the Council, the great, if not the only motive which led it to pass the Act for seven years.<sup>4</sup>

The preamble of the Act explained that His Majesty's "most dutiful and loyal subjects" the Assembly of Jamaica "being deeply sensible of His Majesty's extraordinary grace and favour, in restoring unto us our ancient form of making laws, and in the great assurance given us of his princely resolution to apply not only all the revenue by us now intended to be raised, but even all His Majesty's quit-rents arising from lands granted or to be granted within this island to the support of the Government," had determined to grant to the Crown for seven years the

<sup>1</sup>*C.S.P. Col.* 1681-85. No. 246. <sup>2</sup>*Ib.* No. 270. <sup>3</sup>*Ib.* No. 575.

<sup>4</sup>*Ib.* No. 367.

duties on imported wines. All the Acts passed by the Assembly were then enumerated and it was enacted that they "shall remain and continue in full force and virtue according to the respective tenours, true intents and meanings without any change, alteration or diminution in point of time or otherwise, and that the said Acts and all and everyone of them shall by his sacred Majesty, his heirs and successors be confirmed and allowed under the Great Seal of England, and the same confirmation recorded here in the Office of Enrolments within two years next after the making hereof, but if any of the said recited Acts shall happen by any ways or means whatsoever to be in any part changed, altered, enlarged or diminished as aforesaid, or not under the Great Seal of England *in totidem verbis* confirmed and the same confirmation as aforesaid recorded in the Office of Enrolments. . . . . that then and from thenceforth this Act and every clause, article and thing therein contained shall immediately cease". . . . . All the money was applied to the support of the Government, and £1,000 specially appropriated to the maintenance of the fortifications. The Receiver-General had to give a bond of £5,000 to use the first money he collected for the fortifications, and to report once a year to the Assembly. To make sure that there should be an Assembly to receive the report, it was enacted that an Assembly must meet once a year for ten days at least, and "if at any time hereafter it shall happen it be not yearly called and have liberty to sit as aforesaid. . . . . that then and from thenceforth, this Act and every clause therein contained that hath any relation to the revenue hereby raised, shall cease, determine, and be utterly void to all intents and purposes whatsoever."<sup>1</sup>

The Act was a deliberate attempt to force the Crown to accept all the island laws, to confirm them in a certain way, and within a certain time, and to confirm them unamended ; while the provision for the annual

<sup>1</sup>C.O. 139/7. p. 98.



ten days' meeting of the Assembly was an encroachment upon the prerogative, and the Governor's right to call and dissolve Assemblies at his discretion. Yet it was after the passing of this Act that Morgan wrote to the Lords of Trade that "never Assembly appeared to submit more cheerfully to His Majesty's will," and that he had no doubt that when the Lords had perused the Acts, they would excuse the cautiousness of the Assembly, and represent it favourably to the King!<sup>1</sup>

The Revenue Act was not the only Act in which Morgan had permitted the Assembly to depart from the drafts sent to him. In the Militia Act, the Assembly had accepted the clause to safeguard the Governor's powers as Captain-General, but added the proviso that he might not send anyone off the island or "do any other act or thing contrary or repugnant unto the known laws of England or this Island." He had also consented to an Act declaring the laws of England in force.<sup>2</sup>

Morgan had heard rumours that he was to be superseded and was much hurt. These rumours, he said, were one reason for the Assembly's unwillingness to pass the Revenue Act. It feared that the government should fall into the hands of some person uninterested in the island, seeking only his own advantage. "It is only with great difficulty that I have got things done as they are; and I fear that if they be rejected, it will be hard for any Governor ever again to obtain the like. I wish I had found the colony in the position wherein I leave it."<sup>3</sup>

The Lords of Trade had, in fact, come to the conclusion in the previous May, that since Carlisle had no intention of returning, an abler and more reliable man must be sent to Jamaica, and their choice had fallen upon the former Governor, Sir Thomas Lynch. Lynch was in every way the best man they could have chosen. He was known to the Lords of Trade, and to the planters

<sup>1</sup>*C.S.P. Col.* 1681-85. Nos. 285, 286.

<sup>2</sup>*C.S.P. Col.* 1681-85. No. 270. C.O. 139/7, pp. 129, 163.

<sup>3</sup>*C.S.P. Col.* 1681-5. No. 286.

as a man of sense, honest and sincere ; and if any settlement was to be reached in "the Jamaica business," the Governor, who had to interpret the orders of the English Government to the planters and the demands of the planters to the Lords of Trade, must be a man upon whom the Lords could rely to obey orders, not merely because they were orders, as Carlisle had done, but because he agreed with them in principle, and he must possess the trust and respect of the planters. Lynch was never a violent partisan ; he saw the other side of every question too clearly. He had thoroughly disapproved of the proposed alteration in the government of Jamaica and no man was better pleased with the return to the old form ; but he agreed with the Lords of Trade that some limits ought to be put on the free exercise of the Assembly's legislative power. From his experience ten years before he knew, to use his own word, how "refractory" an Assembly could be. He never surveyed the world through purely Jamaican glasses, yet understanding the point of view of the narrower-minded planters and knowing the sensitiveness of their dignity, he was able to appeal to them by a judicious use of rather blunt flattery, and a display of sympathy. At the same time, he maintained his own dignity and the dignity of his office. Honesty, and a sense of duty were his outstanding qualities. But he was not one of those people who think honesty is another name for speaking unpleasant truths at all times to all persons, regardless of the necessity or the consequence of their action. He was as ready as any man to tell the unpleasant truth when it was necessary, but he agreed

"That he who would make his fellow creatures wise,  
Must always gild the philosophic pill,"

and generally managed to express his opinion in a straightforward, yet palatable fashion. He was a fluent writer. His letters are lively, vivid, and often amusing from his quaint turns of phrase ; with here and there a remark

to show that he was something of a philosopher. In spite of continuous ill-health, of gout and "giddiness in the head," he wrote with his own hand ten or a dozen pages on every opportunity, so anxiously conscientious was he to obey the orders of the Lords of Trade, and to let them have the fullest information on every possible subject.<sup>1</sup>

At first the intention was that Lynch should go out as Carlisle's deputy to replace Morgan, but Lynch himself was very much opposed to such a plan. He put forward some very cogent reasons why he should be the King's, not Carlisle's representative. As Lieutenant-Governor, he would be more Carlisle's servant than the King's, bound to favour his protégés, and to send him the profits of the office. There was a strong feeling in Jamaica against an absentee Governor, and the Assembly would be unwilling to vote money for a Lieutenant-Governor. "Malice and envy will easily make it believed that a Lieutenant-Governor without salary is without credit, a man who will be superseded when he has served his turn." He would be powerless to overawe opposition and effect any good for the King's service.<sup>2</sup> He assured the Lords of Trade that if he was given the title, he would not expect the salary, paid by the English Exchequer, of the Governor. The Lords, therefore, agreed that he should be Governor and Captain-General of Jamaica.<sup>3</sup>

<sup>1</sup>In his devotion to his duty, his honesty and the number and length of his letters, Lynch resembles his contemporary, Sir William Stapleton of the Leeward Islands. Cf. Higham, *Development of the Leeward Islands*, *passim*.

<sup>2</sup>*C.S.P. Col.* 1681-85. Nos. 125, 2082. The later paper is attributed by the editor of the *C.S.P.* to Sir Henry Morgan, but it seems more probable that it emanated from Lynch. The arguments are those, in almost the identical words of No. 125, and the hand is very similar to Lynch's. Further, Morgan does not seem to have had any idea of being more than Lieutenant-Governor under Carlisle's commission.

<sup>3</sup>The Lords of Trade were trying to cut down the sums paid by the English Exchequer towards the Jamaica establishment. On November 3, 1680, by Order-in-Council the two companies of foot sent out with Carlisle were disbanded and the salaries of the Governor, Deputy-Governor and

His commission and instructions embodied the revised powers and instructions of November 3, 1680.<sup>1</sup> His first duty was to obtain a perpetual Revenue Act ; he was forbidden to consent to any laws, save one for naturalisation and another to suppress privateers, until such an Act or one for not less than seven years had been passed, and to let the Assembly know this.<sup>2</sup>

By October 1681 the Lords of Trade had begun to be suspicious of what Morgan was doing in Jamaica ; he wrote too cheerfully that he had passed several local laws, and hoped for a revenue bill shortly. On the 14th, it was decided to give Lynch authority to annul all laws passed by Sir Henry Morgan, unless a Revenue Act was among them, for the "continuance of the laws passed or to be passed by Sir Henry Morgan may very much obstruct His Majesty's service in that island, unless the Act for the Public Revenue were also agreed unto."<sup>3</sup>

Lynch set out at the beginning of November 1681, but delayed in the Downs for fifteen or sixteen weeks by contrary winds, and again at Madeira by illness, it was not until the middle of May 1682 that he reached Jamaica, to be received "with the usual noise that new Governors have."<sup>4</sup> He found the island fairly prosperous, and the people confidently expecting the confirmation of the laws. As soon as he had seen the Revenue Act, he knew how groundless their confidence was, but at first he was cautious in expressing an opinion,

Lieutenant-General with the £600 per annum allowed for the forts, paid by the English exchequer, were "retrenched." On July 28, 1681, the offices of Lieutenant-General and Major-General were abolished. *C.S.P. Col.* 1677-80. No. 1569. *Ib.* 1681-85, No. 194, and *A.P.C.* II. No. 42.

<sup>1</sup>*C.S.P. Col.* 1681-85. Nos. 197, 227. Commission dated August 6, and instructions, September 8, 1681.

<sup>2</sup>*Ib.* No. 227. A further concession to the Assembly, the result of the representations of Morgan and Lynch on the colonial feeling against absentee Governors, was the permission given to insert a clause in the Revenue Act forfeiting the Governor's salary if he did not live in the island.

<sup>3</sup>*Ib.* No. 257. *A.P.C.* II. No. 53.

<sup>4</sup>*C.S.P. Col.* 1681-85. Nos. 552, 575.

even to the Lords of Trade. The Assembly was to meet on July 14, but on the advice of the Council, Lynch prorogued it by proclamation till September 21, hoping that he might have orders from England before that date.<sup>1</sup> As the time for the Assembly drew near, and he heard nothing from the Lords of Trade, he had to decide on a course of action. He could either leave the question of the revenue, until he received, as he felt convinced he would, the disallowance of Morgan's Act and orders to procure another ; or try to persuade the Assembly to repeal the Act of its own free will. He came to the conclusion that the second alternative would save a great deal of ill-feeling, and had, in the circumstances, a fair chance of success.<sup>2</sup>

Therefore, when the House met on September 21, Lynch made it a long speech. There was not, he observed, very much for the Assembly to do, but it had been summoned according to the provision of its own Act. He had not called a new Assembly, believing that the country could not make a choice of worthier representatives than the present members. They were the men who had passed the laws which everyone hoped would be the Magna Carta of the island, and a limitation on himself and the Governors who succeeded him, so that if any amendment was required, it was fittest that they who had "had the charge and trouble of raising this great structure should have the thanks and glory of finishing it." He had not, he went on, any message from the Lords of Trade, but for himself, he would say this much : if it was important that the laws should pass, it would be well to consider whether they would or no ; and if the House judged that they would not, then let it resolve to remove the obstructions. This was the favourable moment, next year he would be bound by positive orders. "Pray, Gentlemen, consider

<sup>1</sup>*ib.* Nos. 552, 553, 575.

<sup>2</sup>*ib.* No. 668. "The King cannot in honour pass a body of laws so tacked (to a money bill) contrary to all reason and precedent, nor in prudence can he allow Assemblies not summoned by himself or his Governors."—Lynch to Lords of Trade.

how much better it is to give voluntarily a step or two than to run the hazard of being driven God knows where." If they entered into debate of the matter, he would explain himself; if not, they must take the responsibility of losing the opportunity of establishing the peace and the laws of the colony. "Believe me, therefore, sirs, should our sins, caprices or follies make us miss that port that now frankly offers itself, and launch into the deep of needless jealousies and disputes, it is to be feared we may find it a wild sea of confusion where we shall not escape shipwreck without a miracle."<sup>1</sup>

The Assembly took five days to think the matter over; then it sent a deputation to the Governor asking him to explain his speech, which Lynch carefully did at some length. The laws would never be accepted tacked to the Revenue Act; he knew the Lords of Trade were not to be trifled with, for he had seen how they had abridged the laws of other colonies. He emphasised the advantages that the island would reap from making the change now. It would gain internal peace, secure the quit-rents for the service of the Government. And he assured his hearers that they had no reason to fear the alienation of the revenue; indeed had they not power to appropriate it to the support of the Government? Let the change be made at once. The Collector declared it was impossible to collect the revenue unless the Act was amended, "and that may make the alteration reasonable and excusable."<sup>2</sup> The Assembly was convinced. On September 28, a new revenue bill was introduced; on October 7, Lynch gave his assent. He then prorogued the House in a speech praising their wisdom, moderation and loyalty, which would not fail of their reward.<sup>3</sup>

The Act was very similar to the one passed the previous year, but no laws were tacked to it. It began with the same preamble expressing the gratitude of the Assembly

<sup>1</sup>*C.S.P. Col.* 1681-85. Nos. 699, 701. *Journals*. I. pp. 58-9.

<sup>2</sup>*C.S.P. Col.* 1681-85. Nos. 706, 711, 712.

<sup>3</sup>*Ib.* Nos. 740, 743, 745.

for the restoration of the old system of legislation, granted for seven years, the duties on wines and a few other commodities imported, appropriated them as well as the quit-rents, fines and escheats to the support of the Government, and set aside £1,000 for the fortifications. The accounts must be submitted to the Assembly, but there was no provision for its annual meeting.<sup>1</sup> Lynch had not suggested a perpetual Act; he told the Lords of Trade that it was out of the question at the moment, and he did not wish "to put [the Assembly] into the train of rejecting his proposals." Lynch, did not approve of the idea of a perpetual revenue. He thought it would be contrary to the Crown's interest, for he insisted that the quit-rents, if properly collected, would, in a few years, amount to a sum sufficient to pay the salaries of Governor and other officials. The King, in allowing these rents to be appropriated, was granting away rights which might become very valuable, therefore, it would be wiser not to grant them in perpetuity.<sup>2</sup>

The Lords of Trade had received Morgan's laws of October 1681 in June 1682, but did not begin to consider them until the end of the following October. The action of the Assembly in tacking all the laws to the Revenue Act and providing for an annual meeting independently of the King's summons aroused their wrath, and it was immediately agreed to recommend that the King, "disallow this proceeding in reference to the calling of Assemblies and the passing, confirming and disallowance of laws," and that all the laws tacked be forthwith disallowed. The Revenue Act itself they sent to the Commissioners of the Treasury for their

<sup>1</sup>*ib.* No. 702. C.O. 139/7. The only other Act passed was one to raise money "for soliciting the affairs of Jamaica in England." Of the £1,600 to be raised in three years, Long was to have £500 "in consideration of his services in London where the business of the country kept him much longer than he expected." The remainder was to be entrusted to William Beaton and Sir C. Littleton, who had been appointed official agents. *C.S.P. Col* 1681-85. No. 745.

<sup>2</sup>*ib.* Nos. 668, 745.

opinion, for though they did not think it ought to be confirmed, they were unwilling to make any recommendation which affected the King's revenue without consulting the Treasury.<sup>1</sup> Ten days later, on November 8, they decided that the Revenue Act should be immediately disallowed, but that the others would be accepted, with amendments, if Lynch secured a fitting Act for the revenue. Lynch was to be told to pass a Revenue Act according to the draft sent to Sir Henry Morgan, and to inform the Assembly that the King will not allow any Acts to be tacked to it, that he will suffer no obligation to be imposed on him in Jamaica or any other colony; that he wishes the Revenue Act passed solely for the good of the island, that if the Assembly refuses to pass it, he will by the authority of the Acts of the English Parliament levy Tonnage and Poundage;<sup>2</sup> but if it obeys he will confirm their other laws for the same period as the Revenue Act.<sup>3</sup> After this decision, the Lords continued their consideration of the laws. They amended some, agreed to recommend the confirmation of others if a satisfactory Revenue Act was passed, and were still engaged in examining the laws, when, on January 12, 1683, they received Lynch's letter of October 8, 1682, enclosing the new Revenue Act, with which they were "much satisfied."<sup>4</sup> On February 23, 1683, this Act with most of the Acts sent by Morgan, were confirmed for seven years. The Act declaring the laws of England in force was disallowed, and some others sent out to Lynch to be amended, the King promising "in like manner to confirm the said laws when they have received the said amendments."<sup>5</sup> The royal letter favourably men-

<sup>1</sup>*Ib.* Nos. 542, 760, 761.

<sup>2</sup>The Solicitor-General had told the Lords of Trade on April 27, 1680, that in his opinion the Acts of Tonnage and Poundage did *not* extend to the plantations: *Supra* p. 103 so that on what authority the Committee made this threat is not clear.

<sup>3</sup>*C.S.P. Col.* 1681-85. No. 771.

<sup>4</sup>*Ib.* Nos. 778, 820, 827, 835, 857, 888.

<sup>5</sup>*Ib.* Nos. 966, 967, 968. *A.P.C.* II. No. 111, p. 833.



tioned Lynch's "fidelity and zeal" in the discharge of his trust "as well in passing the said Act of Revenue, as in the civil and military regulations of that our government," but the Lords of Trade were not yet satisfied. When they wrote to Lynch on February 17, detailing the amendments to be made in the Acts returned to him, they sent orders that he was to do his utmost to get a perpetual Act for the revenue from the Assembly.<sup>1</sup>

Lynch received news of these orders with the confirmation of the laws at the beginning of May, just after he had continued the prorogation of the Assembly for four months.<sup>2</sup> The Assembly, therefore, did not meet until September 5. Lynch in a long speech explained that the King had graciously confirmed their laws for seven years, a result due to the Assembly's statesmanlike conduct. "It is your prudence and moderation that have established our peace, promoted our interest, and given such a sanction to the meetings of Assemblies, that I daresay now that you have made them easy, they will for the future become frequent." There were, of course, some small amendments to be made in one or two of the Acts, and "your declaratory law, Gentlemen, is suppressed as you may see by the order. . . . For my part, I cannot comprehend why some have so violently affected it, since we are all English and nobody has denied us any native rights. . . . I suppose none of you ever heard that any of the other colonies pretend to garble and cull the laws of England, nor can you imagine the ministers would pervert it. And pray would you take all the laws of England together? Would they not (like the Roman spoils) depress and stifle that silly criminal that coveted them." The Speaker in reply thanked Lynch for his work on the behalf of the island; after the King's "gracious favour, we shall have little more to do but every man to sit down under his own vine."<sup>3</sup>

<sup>1</sup>*C.S.P. Col.* 1681-85. 938, 948. <sup>2</sup>*Ib.* No. 1065.

<sup>3</sup>*C.S.P. Col.* 1681-85. Nos. 1236, 1237, 1238. *Journals*. I. pp. 64-68.

The House then turned to deal with the amendments desired by the Lords of Trade, and after lengthy debates, accepted most of them.<sup>1</sup> On September 28, the Speaker and Assembly waited on the Governor to hear his arguments for prolonging the Revenue Act. "*Bis dat, qui cito dat,*" said Lynch. To prolong the Revenue Act was the only way to show that Jamaica trusted the King, and was ready to follow the example of his three kingdoms which had all granted him a "certain fixed and hereditary revenue." He pointed out that the King's revenue from quit-rents and fines "was twice as much as theirs, and duly collected six years hence will be considerable enough for a Prince." The Assembly had now a chance to appropriate these sums to the charges of the Government, for, "if the quit-rents go, the fines, forfeitures, escheats, etc., must accompany them. This taken away, the country must support the Government and distinct officers will be here to collect His Majesty's revenue. It's fit to consider how easy we shall be then!" If the Assembly was afraid, as it said, that if a revenue for a long period was granted, it would be very rarely summoned, he would obtain special instructions from the King to ensure its meeting. Finally he urged them to trust his advice. "I would have [you] consider too, I have always advised faithfully and not erred in my conjectures, the desire to serve [you] having made me think more than others."<sup>2</sup> Lynch's appeal, as much as his arguments, won the day. On October 11, a bill to grant a revenue for twenty-one years was introduced and read twice; a week later it was read a third time and passed, *nemine contradicente*.<sup>3</sup> This Act, except that it was for twenty-one years, was practically identical with the Act of 1682. The Assembly did not seriously consider a perpetual Act, nor was it urged

<sup>1</sup>C.S.P. Col. 1681-85. Nos. 1243, 1246. *Journals*. I. pp. 68-74.

<sup>2</sup>C.O. 1/52, p. 103.

<sup>3</sup>*Journals*. I. pp. 75-77. C.O. 139/7, pp. 277-281. One small change was the increase from £1,000 to £1,250 in the sum applied to the maintenance of the forts. In *A.P.C.* II. p. 833, it is stated that £1,250 was voted for this purpose in 1682, but this was not the case.

to do so by Lynch, who was still convinced that such an Act was not in the interests either of the King or of the colony.

The Acts of this September-October session reached the Lords of Trade early in March 1684. The Revenue Act was at once approved and, after careful consideration, all but three of the others, including some new laws, as well as those amended in accordance with the Lords' directions. On April 17, 1684, the laws so approved, together with those previously confirmed for seven years, were confirmed for twenty-one years from November 1683.<sup>1</sup>

The Lords of Trade had not secured the desired Act for a perpetual revenue, but for the time being, they let the matter rest. It may appear that this twenty-one year Act was dearly bought. The Crown surrendered the quit-rents,<sup>2</sup> the Assembly was allowed to appropriate a sum to the upkeep of the forts, and was permitted to examine the public accounts. But the collection and disbursement of the money was kept in the hands of the royal officials, the Receiver-General and the Governor. No money was issued except on the Governor's warrant, and except the £1,250 set apart for the forts, the appropriation was general, to the support of the Government, not as in previous acts, to specific purposes. Therefore, the Governor, with the consent of the Council, had greater freedom than formerly to apportion the money as he saw fit, or in accordance with his instructions. It is rather remarkable that the same Assembly should pass the Act of 1681, with its vast "tack," and the twenty-one year act of 1683. In 1681, the Assembly was triumphant but fearful; two years later, thanks to the confidence inspired by the Crown's choice of Lynch as

<sup>1</sup>C.S.P. Col. 1681-85. Nos. 1570, 1584, 1627, 1639, 1640. *A.P.C.* II. p. 833.

<sup>2</sup>"Jamaica was unique as the only colony in which the Crown permitted the quit-rents to pass under local control." Bond, *The Quit-Rent System*, p. 368.

Governor, and by his conduct in that office, the Assembly came to a more trusting and more reasonable frame of mind. There is no doubt that it was Lynch's personal influence, his tact, his courage, and his honesty, and the respect in which he was held by the most obstinate champions of the liberties of Jamaica, that led to the passing of the twenty-one year Revenue Act.

## CHAPTER VI.

### THE STRUGGLE FOR A PERMANENT REVENUE.

1684-1704.

In the last fifteen disastrous years of the seventeenth century, it seemed as if the great hopes which at the Restoration had been built on the possession of Jamaica were for ever destroyed.<sup>1</sup> For three years there was a harassing guerilla war with the Maroons ;<sup>2</sup> at the same time, pirates and Biscayners preyed on the island shipping and ravaged the coastal plantations.<sup>3</sup>

The Revolution in itself had little effect on the colony. It did not mean in Jamaica as in New England, a popular uprising and the overthrow of a hated Government. The change of sovereigns was accepted quietly ; for, like the Vicar of Bray, the planters cared not who was king, so long as they themselves flourished. But the war with France which followed the Revolution had more serious results. It meant the interruption of planting by long periods of martial law ; it interfered with trade. The French made more than one attack on the island, though only their invasion of 1694 proved to be dangerous ; but the need for constant watchfulness added to the difficulties of the Governor and the planters. Port Royal was destroyed in the earthquake of 1692,<sup>4</sup> and the question whether it should be rebuilt, or the centre of trade moved to the new town of Kingston, added one more to the many questions which divided the planters into opposing camps. It was against this dismal background that the Crown worked to reach its goal, a per-

<sup>1</sup>F. W. Pitman, *The Development of the British West Indies*, pp. 17-19, 108-9.

<sup>2</sup>*C.S.P. Col.* 1685-88. Nos. 339, 399, 560. The Maroons were the descendants of the negroes left behind by the Spaniards. They had settled in the mountains, where they were joined from time to time by runaway slaves. Lucas, pp. 104-5.

<sup>3</sup>*Id.* Letters of Hender Molesworth throughout 1685-7. Haring, pp. 232-265.

<sup>4</sup>*C.S.P. Col.* 1693-1696. Nos. 207, 634, 1109, 1121\*1236.

manent settlement of the revenue. The Revolution meant no change of policy ; the Board of Trade followed in the footsteps of the Lords of Trade.

The laws of Jamaica, including the Act for the Revenue, were confirmed in April 1684, for twenty one years.<sup>1</sup> The revenue question was not again raised until 1687, when the Duke of Albemarle, the worthless son of General Monk, went out as Governor.<sup>2</sup> Albemarle, who had ruined his fortune and his health by his excesses, intended to repair the one, if not the other by his sojourn in Jamaica.<sup>3</sup> He found the colony divided between the supporters of Hender Molesworth, the Lieutenant-Governor, and the supporters of Henry Morgan.

Molesworth was a man like Lynch, honest, straightforward, but without Lynch's tact and personal charm, brusque in manner and impatient of opposition. He made himself rather unpopular with a certain section of the planters because, in strict obedience to orders, he encouraged the Royal African Company's trade with the Spaniards.<sup>4</sup> Morgan, who as mentioned above, was much pained at being superseded by Lynch, had by his drinking, gambling and general misconduct, compelled Lynch to suspend him from the Council, and dismiss his brother from all his offices.<sup>5</sup> Round the two Morgans had gathered a party of the more disreputable

<sup>1</sup>*Supra* p. 126.

<sup>2</sup>Christopher, 2nd Duke of Albemarle (1653-88). Though he had refused to support his former boon companion, Monmouth, in his wild attempt to gain the throne in 1685, Albemarle's fortunes suffered an eclipse shortly afterwards and he was glad to accept the post of Governor of Jamaica. E. F. Ward, *Christopher Monk, Duke of Albemarle*, pp. 195-220. *D.N.B.* Monk, pp. 593-4. *H.M.S.S. C. 5th report.* App. pp. 372-3.

<sup>3</sup>*C.S.P. Col.* 1685-88 Nos. 699, 1026. Cf. his persistent demand for half the salary and half the perquisites of his office from the day of his appointment ; for the power to confer knight-hoods, to coin money. He secured a monopoly of all saw-mills in all the colonies except New England for 14 years. *Ib.* Nos. 929, 1069, 1289, 1331. *A. P.C.* II. No. 235.

<sup>4</sup>*C.S.P. Col.* 1681-5. Nos. 1298, 1341. *Ib.* 1685-88. Nos. 86, 382 609. He had formerly been the Company's agent.

<sup>5</sup>*C.S.P. Col.* 1681-5. Nos. 1302, 1311, 1715.

characters in the island, and they had caused both Lynch and Molesworth considerable trouble.<sup>1</sup> But the new Governor had much in common with them. Apart from the fact that, as the son of Albemarle who had supported the buccaneers twenty-two years before, he was naturally well-disposed towards Morgan, he shared Sir Henry's taste for heavy drinking and Elletson's<sup>2</sup> eagerness to fill his purse.

With Albemarle's coming, Morgan and his friends triumphed. On the most trivial grounds, Councillors were suspended, officers dismissed, new Justices of the Peace appointed. Morgan was restored to the Council, Elletson made Chief Justice, and his creatures made Attorney-General and Provost-Marshal.<sup>3</sup> As one angry planter observed, "of late men of the best estates and qualifications . . . have been turned out of all authority and command, and their places, as well civil and military, filled up with needy and mechanic men, such as tapsters, barbers and the like."<sup>4</sup> Before Albemarle had thus, to use his own words "settled the offices civil and military,"<sup>5</sup> he had summoned an Assembly. It met on February 16, 1688, and after a six weeks' session, having refused to pass the perpetual Revenue Act, was dissolved.<sup>6</sup> A second Assembly met on July 20, after the wildest election that Jamaica had ever known. "Our elections," wrote one planter "have been unduly and

<sup>1</sup>*Ib.* Nos. 1348, 1573. Lynch complained that they had opposed the passage of the Revenue Act in 1683.

<sup>2</sup>Elletson, "a barrister-at-law and of good esteem in his profession," came out in 1675. In 1679, he was appointed Attorney-General, but was removed by Lynch in 1682. *C.S.P. Col.* 1675-76. No. 781. *Ib.* 1677-80. No. 1118.

<sup>3</sup>*E.g.* John Bourden was suspended from the Council on March 6, Samuel Barry on March 15, John White at the end of July. Hanson suspended from the Commission of the Peace in March; in May, a number of new justices were appointed, and various militia officers dismissed. *C.S.P. Col.* 1685-88. Nos. 1656, 1663, 1705, 1753, 1761, 1858, 1906.

<sup>4</sup>*Ib.* 1689-92. No. 50.

<sup>5</sup>*Ib.* 1685-88. No. 1705.

<sup>6</sup>*Ib.* Nos. 1635, 1640, 1663, 1669, 1679, 1693. •

unfreely carried and managed by the authority and overawe of the Chief Justice [Elletson] and other of our great men, whereby the old freeholders. . . . were outdone by sham new ones, not to be found or heard of. . . . Horse and foot brought in some places to carry it by a high hand." In several parishes there was serious rioting.<sup>1</sup> The Assembly thus elected, proved willing to obey the Governor. Before Albemarle died on October 6, it had passed an Act for a perpetual revenue.<sup>2</sup>

The Lords of Trade had received Albemarle's first reports with approval, and had recommended that the men he suggested should be appointed to fill the vacancies in the Council.<sup>3</sup> But in the autumn of 1688, as complaints of his high-handed and reckless actions reached them, their opinions changed;<sup>4</sup> and when at the end of November, they received news of his death, they immediately decided that Molesworth should be sent out to restore order. In the meantime, Sir Francis Watson, President of the Council, was ordered to reinstate at once all Councillors or officers dismissed by Albemarle.<sup>5</sup> This was one of the last orders of James II. It was, however, confirmed by William III. in January and February 1689. All Acts of the Assembly passed since Albemarle's death were declared null and void, and Watson was told "to pursue such methods in the administration of the government as were used. . . . by the late Governor, Sir Thomas Lynch."<sup>6</sup>

<sup>1</sup>*Id.* No. 1858. *Id.* 1689-92. No. 50. Elletson seized the opportunity to revenge himself on his enemies by levying excessively heavy fines on all who, in any way, could be shown to have taken part in riots or opposed the return of his candidates. *Id.* 1685-88. Nos. 1846, 1870.

<sup>2</sup>*Id.* 1685-88. No. 1927. "Upon the occasion of choosing a new Assembly [he] had frequently too much company . . . sate up too late and drank too freely whereby he in a short time had in one of his legs a great pain." Sloane, MSS. 3984, fos. 282-4.

<sup>3</sup>*C.S.P. Col.* 1685-88. Nos. 1762, 1769.

<sup>4</sup>*Id.* Nos. 1865, 1884, 1906, 1941.

<sup>5</sup>*Id.* Nos. 1940, 1943.

<sup>6</sup>*Id.* 1689-92. Nos. 19, 29. *A.P.C. II.* No. 277.



When, therefore, Ralph Knight, Watson's emissary, arrived in England with the laws passed by Albemarle, he found the Duke's actions repudiated, the enemy of the present ruling faction re-appointed Governor, and the Jamaica planters and merchants in London exerting all their influence to have the laws he brought annulled. He made several attempts to secure their confirmation, but the opposition was too strong.<sup>1</sup> The Lords of Trade were placed in an unfortunate position. Here was the Act for a perpetual revenue for which they had been striving for ten years, yet they did not feel justified in recommending its confirmation in face of the emphatic assurance of the Jamaica merchants and planters, that it had been passed by an illegally-elected Assembly. On December 5, Knight and his opponents with their respective counsel were heard by the Committee. It was decided that no action should be taken, the laws should neither be confirmed nor disallowed, until the new Governor, Lord Inchiquin, who was setting out for Jamaica, had examined the whole matter of the election of the Assembly of July 1688.<sup>2</sup>

Inchiquin reported in August 1691, that scarcely five members had been legally elected, but added that Elletson's opponents had tried to use the same methods but without success.<sup>3</sup> Writing at the same time to Secretary Nottingham, he urged that "the King do not upon any terms abrogate the bill passed in the Duke of Albemarle's time for the perpetuating the revenue," for the present Assembly would never pass a similar Act.<sup>4</sup> To Inchiquin's indignation, it had introduced a bill to vacate all the Acts passed by its predecessor, a proceeding which

<sup>1</sup>*C.S.P. Col.* 1689-92. Nos. 7, 54, 59, 537. *A.P.C.* II. No. 308.

<sup>2</sup>*C.O.* 138/6, p. 325. William O'Brien, 2nd Earl of Inchiquin (1638-1692), was appointed Governor on September 11, 1689. *C.S.P. Col.* 1689-92. No. 413. For six years (1674-80), he had been Governor of Tangier. *D.N.B.* O'Brien, pp. 775-776.

<sup>3</sup>*C.S.P. Col.* 1689-92. No. 1698. <sup>4</sup>*Ib.* No. 1699.

Inchiquin stigmatised as presumptuous, as the laws were at the time under the royal consideration.<sup>1</sup>

The Crown took no action. The laws were neither confirmed nor disallowed, and for the next twelve years, the revenue was collected by virtue of the Act of 1683. The English Government was extremely loth to disallow the Revenue Act of 1688, until it had secured another like it. They argued that, though one party declared that the Assembly which passed the Act was illegally elected, another emphatically denied it. They would not, in the meantime, make any decision, but if the people of Jamaica did not wish this Act to be confirmed, let the Assembly pass a similar indefinite Act. The Crown would accept it instead of the disputed Act of 1688.<sup>2</sup>

Beeston,<sup>3</sup> Inchiquin's successor, made repeated attempts to persuade the Assembly to comply with the wishes of the Crown. In 1695, a perpetual Act was introduced, but the House refused to proceed with it. Four years later, Beeston pointed out to the Assembly that the laws confirmed by King Charles for twenty-one years would shortly expire, and proposed that it should pass an indefinite Revenue Act, and he would pass all the other laws indefinite also. But the Assembly refused.<sup>4</sup> As before, the chief objection to an indefinite Act was that no Assembly would be summoned once the Crown had secured a sufficient revenue in perpetuity. It was true that, since the passage of the twenty-one year Act, the fear that an Assembly would never be held had not been realised. But that might well be, because the revenue granted by the Act of 1683 was inadequate in time of war.

<sup>1</sup>*C.S. P. Col.* 1689-92. Nos. 1640, 1674, 1698. *Journals.* I. pp. 140-1. <sup>2</sup>*Ib.* 1701. No. 67. *Ib.* 1704-5. No. 25.

<sup>3</sup>Sir William Beeston, Governor 1692-1701. He had been closely identified with Jamaica since 1660. He was a member of the first Assembly. Speaker, 1677, 1678, 1679. Agent, 1682. His diary is printed in *Interesting Tracts. C.S.P. Col.* 1677-80. Nos. 169, 786, 1095. *Ib.* 1681-5. No. 740. *Journals.* I. p. 1.

<sup>4</sup>*C.S.P. Col.* 1693-6. Nos. 1970, 2028. *Ib.* 1696-97. Nos. 43, 73. *Ib.* 1697-98. No. 1028. *Ib.* 1699. Nos. 254, 548.

Once the war was over, expenses would be less, and with the increase in trade and planting consequent on the restoration of peace, the revenue would increase. The Assembly became every year noticeably more unwilling to grant even the necessary additional duty for a longer period than twelve months. In 1693, it passed an Act for an additional duty for five years but when that expired, would only continue it from year to year, and in the early years of the eighteenth century, reduced it to periods of three or six months. The Assembly learnt to use its control over the supplementary revenue demanded by the exigencies of the time, not only to secure an annual session, but to secure that the session should last as long as it wished. In 1702, it began the practice of passing an Act for a few months, or until the determination of the session, whichever should be the shorter period.<sup>1</sup>

With the Assembly in this temper, the chances of a perpetual Revenue Act ever being passed seemed exceedingly small. As early as 1696, Beeston had suggested that, as there was so little hope of an indefinite Act, the Crown should confirm the Act of 1688.<sup>2</sup> The Board of Trade, however, took no action until January 1701, when they submitted a report to the King on the question of the revenue of Jamaica.<sup>3</sup> The report described how the Act of 1683 had been passed, how it had been superseded by the Act of 1688, but "your Majesty has been pleased hitherto to suspend upon the said Act either for confirming [it] or disallowing the same, in expectation that the Assembly . . . would pass another Act for raising a perpetual revenue to your Majesty . . . ." In spite of the efforts of successive Governors, the Assembly had not complied with the royal wishes, and as the Act of 1683 would shortly expire, it was

<sup>1</sup>*Acts of Assembly of Jamaica*, 1681-1754, pp. 1-3. 1698. Additional duty granted for eight months only. 1702. Additional duty for one year or the determination of the session and the Act for quartering the troops for three months only. *C.S.P. Col.* 1697-98. No. 1028; *Ib* 1702. No. 323.

<sup>2</sup>*Ib.* 1696-97. Nos. 40, 73. <sup>3</sup>*Ib.* Nos. 67, 68.

necessary "that some resolution be speedily taken upon the aforesaid Act" of 1688. The Board of Trade suggested that the Assembly should be told that unless it passed a perpetual Act for the revenue, the Act of 1688 would be confirmed. The report was approved, but Beeston in Jamaica was unable to do anything.

The Assembly which met in June-July 1701, displayed that type of factiousness which came to be its outstanding characteristic during the next thirty years. It began by demanding the accounts of the King's Bounty. The Council refused. The money was the King's, sent by him to assist the colonists after the earthquake, and to the King alone were they responsible for its expenditure. The Assembly then decided that, instead of an Act for quartering the troops, it would pass an Act to pay the officers for the maintenance of their men, the money to come out of the King's Bounty. The Council naturally rejected the bill, and in turn the Assembly threw out the Council's Bill. It had already refused to grant the additional duty, so Beeston, in great anger, prorogued it, and as the only way to maintain the soldiers, put the island under martial law.<sup>1</sup> He wrote to the Board of Trade that "this parcel of young men," led by an Irishman, Hugh Totterdale, "were stirred up to believe that what a House of Commons could do in England, they could do here, and that during their sitting, all power and authority was only in their hands." He added that, but for the prorogation, the Assembly would have petitioned the House of Commons against the confirmation of the Revenue Act of 1688.<sup>2</sup>

During 1702, nothing was done towards settling the Revenue. Selwyn, the new Governor, died early in April. The Lieutenant-Governor, Beckford, managed to pacify the Assembly and to secure the passage of the urgently-required Act for the additional duty, as well as a vote of £17,000 to pay the public debts.<sup>3</sup> In

<sup>1</sup>*C.S.P. Col.* 1701. Nos. 576, 642. *Journals.* I. p. 217.

<sup>2</sup>*C.S.P. Col.* 1701. Nos. 676, 749. <sup>3</sup>*Ib.* 1702. No. 276. *Journals.* I. p. 236-247.

December, Colonel Handasyd took over the government.<sup>1</sup>

Meanwhile in England, despite Beeston's emphatic statement to the Board of Trade,<sup>2</sup> that the Assembly would never agree, it was decided to demand that a perpetual Act should be passed. At the end of February 1703, instructions, in the words of the report of 1701, were prepared for Handasyd. Unless the Assembly would pass, before the November following such an Act "for settling our revenues . . . . . as may be fit to receive our royal confirmation," the Queen would confirm the Act of 1688. In his private instructions, the Governor was told that "by such fitting Act we do intend (in case they cannot be induced to make the said revenue perpetual) a new one which shall grant the same for at least twenty-one years." If the Assembly would not pass such an Act, Handasyd, without delay, must send word to England, "whereupon we will immediately give our royal assent to the said Act of Revenue passed by the Duke of Albemarle."<sup>3</sup>

These orders reached Handasyd at the end of May in the midst of his struggle to extract from the Assembly supplies for the support of the troops.<sup>4</sup> Instead of renewing the former Act, the Assembly sent up a bill to provide quarters for one month for the men only. The Council rejected it, and the Assembly refused to proceed further in the matter until the various committees it had appointed to examine the public accounts had reported.<sup>5</sup> At the beginning of June, when four hundred recruits arrived, it demanded that they should be kept on board the ships until an Act for their maintenance could be passed, but delayed day after day, on one pretext and another, to pass the necessary measure. The men had to be landed, and were reduced to the most miserable straits. Several died from exposure and lack

<sup>1</sup>C.S.P. Col. 1702-3. Nos. 19, 22. <sup>2</sup>*Ib.* 1702. No. 854.

<sup>3</sup>*Ib.* 1702-3. Nos. 356, 367. <sup>4</sup>*Ib.* No. 764.

<sup>5</sup>*Ib.* Nos. 651, 657, 667, 685.

of food ; others were only saved by the gifts of money and food sent by the Governor and some members of the Council.<sup>1</sup>

Handasyd must, therefore, have been agreeably surprised when, on May 21, two days after he had communicated his instructions on the subject of the revenue to the Assembly, he received its offer to grant the revenue for twenty-one years. On the advice of the Council, and in accordance with his private instructions he accepted the offer.<sup>2</sup> The Assembly's action, considering its general attitude on the subject of finance, is surprising. It can only be supposed that it was convinced of the Crown's determination, and alarmed by the threat to confirm the Act of 1688. To renew the Act of 1683 would not lessen the power it enjoyed, for the royal revenue, certainly in time of war, would remain inadequate for the support of the Government.

Very little progress was made until the autumn, for a violent quarrel broke out between the Council and Assembly over the right of the former to amend a money bill. On June 5, the Assembly refused a conference on a bill which appointed some Commissioners to inquire into the execution of a previous Act to levy a tax at Port Royal, as it was a money bill. When the Council pointed out that there had been a conference in the previous Assembly on "the bill which raised this very money you are now inquiring after," the Assembly hastily replied, that if there was such a conference, it was a mistake, and ought not to be taken as a precedent. The previous session had been very short and hurried, which "might occasion such an oversight."<sup>3</sup> On June 13, the same point came up when the Council asked for a conference on the very unsatisfactory Quartering Act.

<sup>1</sup>*C.S.P. Col.* 1702-3 Nos. 764, 784, 810, 815, 833, 885. For years, the troops sent out for the defence of the island were treated by the Assembly after this fashion. Cf. *A.P.C.* II. No. 1261 *C.O.* 137/13, No. 16, II. *C.O.* 137/17, pp. 18, 19.

<sup>2</sup>*C.S.P. Col.* 1702-3. No. 764. *Journals.* I. p. 279.

<sup>3</sup>*C.S.P. Col.* 1702-3. No. 784.

The Assembly refused, and because the occasion was urgent, under protest, the Council gave way and passed the Act.<sup>1</sup> The issue was raised on every money bill that session ; on October 30, the Assembly agreed to a conference on the Quit-rent Act "since it is not a bill for money raised in our House," but the same day refused to meet the Council on the Additional Duty Act.<sup>2</sup>

Handasyd supported the Council, and justly told the Assembly that its conduct was "contrary to former precedents and the undoubted method and proceedings of the former Councils and Assemblies."<sup>3</sup> But neither his remonstrances nor the repeated instructions of the Crown,<sup>4</sup> had any effect. During the remainder of the period under review, the Council's right to amend money bills caused bitter quarrels between Council and Assembly. Handasyd correctly described the Assembly's action as unprecedented. As the Council had said, there had been a conference on a money bill only the previous year, and the Journals of the House and the minutes of the Council show the Council making amendments to revenue bills, and discussing their provisions in a free conference.<sup>5</sup> To deny this right was an innovation, but it is by such innovations based on appeals to precedent and its rights and privileges that the House of Commons has at all times increased its powers. Considering itself the House

<sup>1</sup>*C.S.P. Col.* 1702-3. No. 818. <sup>2</sup>*Ib.* No. 1217, cf. also Nos. 833, 882.

<sup>3</sup>*Ib.* No. 833.

<sup>4</sup>Clause 27 of Portland's instructions 14 December 1721, "You are to take notice that our Council, as such are a more ancient part of, and have still at least an equal share in the legislature with the Assembly." C.O. 138/16, p. 346.

<sup>5</sup>*C.S.P. Col.* 1702. Nos. 832, 879. *E.g.* 1672.—Proposals for raising and re-ordering the duties on wines were sent from Council to Assembly and considered by a joint committee. 1686.—A conference on a bill to raise additional revenue. 1691.—Conference on amendments to a bill for raising additional revenue. *Ib.* 1669-72. No. 747. *Ib.* 1685-88. Nos. 868, 869. *Ib.* 1689-92. No. 1656. The same question was raised in New York a little later, cf. *Ib.* 1706-8. No. 86. *Ib.* 1710-11. Nos. 517, 832.

of Commons of Jamaica, the Assembly used the methods and claimed all the rights of its prototype.<sup>1</sup>

Then the Assembly spent the greater part of August and September in a struggle with a section of its own members. Eight members were expelled for their presumption in walking out during a debate, and afterwards maintaining at the bar of the House, that they had left because the Speaker could not keep order.<sup>2</sup> When the same men were re-elected, the Assembly refused to allow them to take their seats, since they had been declared incapable of serving in that House. The Governor, however, refused to issue new writs. The Assembly, he said, was attempting to deprive the people of their freedom of election, to which the Assembly retorted that though "freedom of election is an inherent right of the people, it is as true that when persons are elected it is the certain right of the Assembly to judge whether such persons are capable to sit."<sup>3</sup> To this, Handasyd answered "you allow the people a right to elect; but would have them elect none but such as shall please you," and he added "I must further put you in mind that the expulsion of a single member in so great a body as the Parliament of England is not to have the same weight with me as the expulsion and absence of a third of

<sup>1</sup> "We can't but insist on the justification of our former proceedings not to admit of any conference where the public funds are to be called to an account, and examined and that which further confirms our opinion is a paragraph in her Majesty's most gracious speech to both Houses of Parliament, October 21, 1702, when her Majesty applies herself particularly to the House of Commons, 'and that my subjects may the more cheerfully bear the necessary taxes I desire you to inspect the accounts of all public receipts and payments' . . . " *Ib.* 1702-3. No. 882. This claim of colonial Assemblies to possess the power of the House of Commons was expressly denied by the Crown. "No Assembly in the Plantations ought to pretend to all the privileges of the House of Commons in England, which will be no more allowed than it would be to the Councils if they should pretend to all the privileges of the House of Lords here." *Ib.* 1706-8. No. 86.

<sup>2</sup>*C.S.P. Col.* 1702-3. Nos. 998, 1024, 1040. <sup>3</sup>*Ib.* Nos. 1099, 1103, 1113.



your whole Assembly." As he refused to issue the writs and the Assembly refused to admit the expelled members, it was in this depleted House that the Revenue Act was debated and finally passed.<sup>1</sup>

This incident was the first sign of the ill-feeling between the colonial-born and the English-born which was to embitter the politics of Jamaica during the eighteenth century. Most of the Assembly, observed Handasyd, "being Creolians are at as great variance with those born in England as if they themselves were not descended from English parents."<sup>2</sup>

In the midst of these storms, the Assembly had little time to deal with the Revenue Act. On May 28, it had agreed to renew the Act for twenty-one years. The next step it took was on July 8, when it informed the Council that it proposed to re-enact *de novo* all the laws which expired with it. This meant further delay. The Council urged that the island had had twenty years' experience of the laws without finding any considerable inconvenience in any of them, and that any necessary amendments could be made by a supplementary explanatory Act. The Assembly merely sent a message reiterating its proposal, and "your Honours of the Council [are] desired to take what part you please in order to expedite the same."<sup>3</sup> However, at the end of September, the Assembly changed its mind, and decided to insert a clause in the new Revenue Act to continue all the laws about to expire for twenty-one years. On October 11, the bill for "settling and continuing the revenue" was introduced, and three days later, passed. On November 2, it was passed by the Council.<sup>4</sup>

<sup>1</sup>*C.S.P. Col.* 1702-3. Nos. 1113, 1217.

<sup>2</sup>*Ib.* No. 1055. This dislike of the English-born was shared by other colonies, e.g. Virginia. Flippin, *The Royal Government of Virginia*, p. 119.

<sup>3</sup>*C.S.P. Col.* 1702-3. Nos. 897, 917.

<sup>4</sup>*Ib.* Nos. 1105, 1134, 1143, 1227. The Council's delay was due to its hesitation to pass a bill passed by an Assembly from which so many members were excluded. *Ib.* Nos. 1152, 1163.

The Revenue Act was received by the Board of Trade early in 1704.<sup>1</sup> As it was very similar to the Act of 1683, it was considered satisfactory. The Board, however, objected to the clause whereby all the laws of Jamaica confirmed in 1684 were continued for twenty-one years. The Assembly should not have added it, "inasmuch as Her Majesty had promised to confirm the said Acts as soon as the Assembly should pass the Act of revenue."<sup>2</sup> But they did not mention their objection in their report to the Queen, and the Act was confirmed on August 17, 1704.<sup>3</sup>

<sup>1</sup>*C.S.P. Col.* 1704-6. No. 63. February 3

<sup>2</sup>*Ib.* No. 107.

<sup>3</sup>*Ib.* Nos. 506, 534. *A.P.C.* II p. 835. On May 19, the Act had been sent to the Lord High Treasurer for his opinion. No answer was received until August 10, when he approved the Act. *Ib.* Nos. 335, 500.

## CHAPTER VII.

### THE FINAL COMPROMISE. 1704-1729.

In dealing with the efforts of the Crown to secure a permanent revenue settlement in Jamaica, it is unnecessary to enter into the troubled "parliamentary" history of the next twenty years. It is sufficient to say that a meeting of the Assembly meant a repetition of the arguments, the quarrels and the ill-feeling of the session of 1703. The Assembly "who only meet to show they can adjourn,"<sup>1</sup> continued to dispute the Council's right to amend money bills, to grant additional supplies for three, six or twelve months only, to tack other Acts or clauses to these supply bills, and to appoint officers to receive and disburse the money so raised.<sup>2</sup>

The mutual dislike of Creolians, or Jamaica-born, and Englishmen increased ; and the former "who will not allow themselves to be called Englishmen," carried their jealousy to the length of attempting to exclude Englishmen from the island's offices.<sup>3</sup> At times, the debates in the House threatened to degenerate into riots. Handasyd describes how on April 3, 1710, the Assembly "at an unusual hour betwixt nine and ten o'clock at night," met at the Assembly House "and there fell into such warm debates about turning out their Speaker, that they put the whole town in an uproar, and murder was cried out in several places." He immediately "ran with all speed towards the Assembly House.....

<sup>1</sup>"The Politicks and Patriots of Jamaica," 1718, p. 3. The Assembly's claim to a right to adjourn, without the Governor's permission for longer than *de die in diem* was an additional cause of trouble. Cf. *C.S.P. Col* 1706-8. Nos. 678, 735, 793, C.O. 137/13, Nos. 16, 29.

<sup>2</sup>*Ib. e.g.* In 1718 in an Act to raise an additional duty, the Receiver-General was to collect the money, but he was "tied up by an oath to be accountable to the present or any future Assembly." A clause was tacked to the Act to relieve two members of the Assembly from paying large sums of money due by them on prize goods. Lawes to the Board of Trade, January 1, 1719. C.O. 137/13, No. 29.

<sup>3</sup>*C.S.P. Col*. 1706-8. Nos. 616, 1423.

resolved to prevent what mischief might happen. . . . . Finding them all in an uproar and confusion, I rushed in among them and in Her Majesty's name commanded the House to adjourn. . . . . which I must say they immediately obeyed, nor did I see any swords drawn."<sup>1</sup>

During these years, little could be done towards effecting a permanent revenue settlement. In 1718, the Assembly talked of introducing an Act for perpetuating the revenue and "asserting the rights and liberties of the subjects by enforcing and continuing such Acts as might be consistent with the welfare of the island."<sup>2</sup> Four years later, a committee of the House was appointed to draft such an Act, but as usual, the never ending quarrels of Council and Assembly prevented any further action.<sup>3</sup> And Lawes,<sup>4</sup> the Governor, wrote to the Board of Trade that he was daily more convinced that there was "no bringing the people to a sense of their duty but by settling His Majesty's revenue by Act of Parliament."<sup>5</sup>

Early in 1722, the Board of Trade consulted the law officers as to whether on the expiration of the Act of 1703, the Acts of 1683 and 1688, would be revived.<sup>6</sup> Legal opinion differed. Mr. West,<sup>7</sup> thought that it might be a point of law, whether the Act of 1688 might not be revived.<sup>8</sup> But in their report of March 28, the Board adopted the view of the Attorney- and Solicitor-General, "that although some question in law might possibly arise whether upon the expiration of this temporary Act

<sup>1</sup>*C.S.P. Col.* 1710-11 No. 187.

<sup>2</sup>*C.O.* 137/13. No. 29.

<sup>3</sup>*Journals.* II. p. 444.

<sup>4</sup>Sir Nicholas Lawes (1652-1731), Councillor and Chief Justice 1698, Governor 1717-1722. *C.S.P. Col.* 1697-8. No. 890. *A.P.C.* II. p. 796. Howard, *The Longs of Jamaica*, p. 61.

<sup>5</sup>*C.O.* 137/14, pp. 34, 95.

<sup>6</sup>*C.O.* 138/16, pp. 404, 407. February 10, March 2.

<sup>7</sup>King's Counsel appointed in 1718 to assist the Board in legal business. Russell, *Review of Colonial Legislation*, pp. 65-6.

<sup>8</sup>*C.O.* 137/14, p. 107, March 22.

(i.e. of 1703) in 1724, the Revenue Acts of 1683, 1688 might not revive. . . . it would be most advisable to procure a new Act of Assembly as well for establishing a sufficient revenue. . . . as for the further confirmation of the laws of Jamaica depending upon the aforesaid Act."<sup>1</sup> The Duke of Portland,<sup>2</sup> was going out as Governor. Before passing any Act for the revenue, he was ordered to prepare, with the advice of the Council and Assembly, a draft of such an Act either for twenty-one years or for perpetuity, and also an "establishment" of the yearly charges of the Government to be incorporated in the Act and to transmit both to England for the approval of the Crown.<sup>3</sup>

Portland arrived in Jamaica at the end of December 1722. On January 23, 1723, the Assembly met. A fortnight later, Portland, in spite of his orders to the contrary, gave his assent to an Act "for making His Majesty's revenue perpetual and augmenting the same and continuing and declaring what laws are in force in the Island." Writing to the Board of Trade, Portland explained his conduct by his fear that the delay involved in sending a draft home would allow the Assembly time to change its mind, and that it would not pass a Revenue Act at all.<sup>4</sup>

The Assembly had refused to pass the Act until the Council agreed that all the laws used in the island, not as in 1703, merely those confirmed by the Crown in 1684, should be perpetuated by the Act. The Act has

<sup>1</sup>C.O. 137/14, p. 116, March 5. C.O. 138/16, pp. 413-15, March 28

<sup>2</sup>Henry, 1st Duke of Portland (1680-1726), eldest son of William III.'s friend, William Bentinck, Earl of Portland, was appointed Governor of Jamaica, September 9, 1721, and died in the island, July 4, 1726. *The Complete Peerage*. C.O. 138/14, p. 33. C.O. 137/16, p. 272. *A.P.C.* IJI. p. 816.

<sup>3</sup>*Ib.* III. No. 45. C.O. 138/16, p. 417-9. It was occasionally the practice of the Board of Trade to demand that the draft of a desired Act should be sent to England for their consideration before it was passed into law, or to send to the colony, the draft of an Act they wished passed. Russell, *Review of Colonial Legislation*, pp. 91-2.

<sup>4</sup>C.O. 137/14, p. 182. C.O. 137/14, p. 190. *Journals*, pp. 498-501.

far more the appearance of a declaration of rights than of a Revenue Act, so much greater emphasis is laid on the rights confirmed to the people than the revenue granted to the Crown. The Act is in itself of little importance as it was immediately disallowed, but its long preamble, which is much the greater part of it, gives the Assembly's interpretation of the constitutional rights of the colony.

"It is evident" the preamble runs, "not only from common reason and the law of nature that the natural freeborn subjects of England, by conquering and settling of this island annexed the same to the Dominion of that realm, could not thereby forfeit or give up any of the immunities, rights, liberties or privileges of Englishmen, but brought with them a right and title to all such . . . liberties . . . as they had before, or as any of his then Majesty's subjects in England were entitled unto."<sup>1</sup> It then cites the proclamation of December 14, 1661, and the declarations of successive Sovereigns of England "signifying and declaring that Assemblies should be held and convened in this Island as near as might be conformable to the usage and custom of holding Parliament in England." These proclamations and declarations, "together with [the] coronation oath established by the Act of Parliament made in England in the first year of the reign of the late King William and Queen Mary, and with other Acts passed in the said Kingdom, are a full and ample declaration of their said Majesties and the whole legislature of England that the free-born subjects and inhabitants of this Island are to be governed as Englishmen by and according to the known laws, statutes, customs . . . liberties and

<sup>1</sup>This was contrary to the opinion of the Attorney-General in 1676 and 1680, cf. *supra*, pp. 14, note 1, 103. But it was held by some lawyers in the seventeenth century, cf. *C.S.P. Col.* 1677-80. No. 465. "The Planters believe, and the lawyers here say, that native subjects and under a pure English dominion, they have a right" to the laws of England, cf. also Bryan Edwards, pp. 371-2, quoting a legal opinion opposed to Mansfield's judgement in *Campbell v. Hall* *supra* p. 109.

privileges" of England, "and not by any methods contrary thereto." As since the conquest, all law suits have been settled either by the laws of England, or the laws of Jamaica, and as nothing is more likely to contribute to "the advancement of trade and the well-peopling and strengthening of this Island than the supporting the honour and dignity of the Government thereof and a just establishment of liberty and property and due regular and impartial administration of justice, And to the intent that His Majesty may be enabled to support . . . . his Government in the Island, and that the laws and ordinances thereof be made perpetual, be it enacted" that the Act for the revenue passed in 1703 be perpetual as well as all the laws depending thereon.

"And for the better ascertaining the rights, liberties and privileges" of the people of Jamaica, judges are to administer justice according to the laws of England as they stood on December 14, 1661, and according to such laws explanatory of them since made in England, "for the common advancement of justice," among which laws the Habeas Corpus Act and the Bill of Rights are specially mentioned. The last clause of the Act increased the duty on Madeira wine.<sup>1</sup>

This Act was disallowed on August 6, 1723.<sup>2</sup> The Board of Trade represented that the revenue it would produce was insufficient for the ordinary charges of the Government, and that the law-officers objected to the clause which declared all the laws of England in

<sup>1</sup>C.O. 139/10.

<sup>2</sup>C.O. 137/14, p. 225. *A.P.C.* III. No. 45. The procedure in dealing with this and succeeding Revenue Acts was for the Board to send them immediately to the Attorney- and Solicitor-General and the Treasury for their opinion. Their objections, sometimes, with a few additions, were embodied in the Board's report to the King. This report with the Acts was referred by the Privy Council to a committee. The committee, sometimes after consulting with the law officers, submitted a report to the Council, and an Order-in-Council followed to carry out its recommendations. Occasionally, of course, there were slight variations in this procedure. C.O. 138/16, p. 437. C.O. 137/14, No. 192. C.O. 138/16, p. 445. Cf. Russell, *Review of Colonial Legislation*, pp. 50-54. *A.P.C.* III. p. 840.

force. The clause was too general and particularly required "that in all cases of liberty the judge . . . . . shall observe the rules prescribed by the Habeas Corpus Act." The benefit of the Habeas Corpus Act had not been granted to Ireland; how far was it proper "to enact it in Jamaica which is a colony at so great a distance?" The Act would "take off the dependence of that island from the Crown . . . . . under which their government and laws have been and are established, and create infinite doubts, difficulties and confusions even concerning the liberties and properties of the people." Instructions were accordingly repeated that Portland should send to England a draft of the Revenue Act and an estimate of the annual expenditure.<sup>1</sup>

At the end of June 1724, a Revenue Bill, passed by the Council and Assembly but to which Portland had, in obedience to his instructions refused his consent, reached the Board.<sup>2</sup> Considered as a money bill, this was a much less fantastic document than the Act of the previous year. It was accepted by the Board as a basis for the Act they wished the Assembly of Jamaica to pass, and on it was founded the final Act of 1728. There were three great objections to the bill as it stood. It would not raise that sufficient revenue desired by the Crown, it further limited the Crown's control over the money raised, and the clause to continue the laws of the island was, as before, too vague.

The Board maintained that the duties, as fixed by the Act, would not produce the £8,000 which was the estimated annual expenditure. There was no provision for the payment of the public debt, nor for the maintenance of the troops stationed in the island. The Assembly's promise to make good any deficiency was worth little, and as before the Governor would be involved in yearly difficulties with it.<sup>3</sup> The bill provided that if at any

<sup>1</sup>C.O. 138/16, p. 445. *A.P.C.* III. No. 45.

<sup>2</sup>C.O. 138/16, pp. 470, 473. <sup>3</sup>Board of Trade to Newcastle, August 6. C.O. 138/16, pp. 495-500. Treasury to Board of Trade, July 16. C.O. 137/14, p. 355.



time the duties should bring in more than £8,000 the surplus should be applied to such purposes as the Assembly thought fit. The Treasury objected, that as the Crown had surrendered its quit-rents, any surplus ought to be left at the disposal of the King. Then the Receiver-General of the revenue was to give bond to account to the Governor, Council and Assembly, with no mention of the Treasury in England. "This in my Lords' opinion is setting up an insufferable independency, and therefore they do insist that the Receiver-General be made to account before their Lordships or the Auditor of the Plantations," according to the King's instructions to every Governor.<sup>1</sup> Finally, the clause to re-enact the laws though "much less liable to exception than that sent over last year" was unsatisfactory, in that it perpetuated all the laws of Jamaica, some of which were not fit for that honour.<sup>2</sup>

As there was scarcely time to amend the draft bill and return it to Jamaica before the existing Revenue Act expired in October, at the end of July, it was decided, as a temporary expedient, to instruct Portland to pass an Act to continue the Revenue and other Acts for one year.<sup>3</sup>

After the dispatch of these orders, on August 6, the Board of Trade wrote to Newcastle, outlining the main faults of the bill. "Considering that this may be the best opportunity His Majesty will have to engage the people of Jamaica to make such firm and lasting provision as may be sufficient for His Majesty's service and for their security," they proposed that the Attorney and Solicitor-General should "form a draft of a bill for this purpose as near the plan of that sent from Jamaica as may be."<sup>4</sup> But their suggestion was not acted upon until seven months later, when on March 3, 1725, the necessary Order-in-Council was issued.<sup>5</sup> At the be-

<sup>1</sup>Treasury to Board of Trade, July 16. C.O. 137/14, p. 355. <sup>2</sup>Attorney and Solicitor-General to Board of Trade. C.O. 137/14, p. 328. <sup>3</sup>C.O. 138/16, p. 480-3, 485, 487-90. *A.P.C.* III. No. 68, July 24.

<sup>4</sup>C.O. 138/16, p. 495-500. <sup>5</sup>C.O. 138/17, p. 1. *A.P.C.* III. No. 68.

ginning of June, as nothing had been heard from the law officers, Portland was ordered to continue the Revenue Act for a second year.<sup>1</sup>

These orders were very unpopular in Jamaica. When the Assembly met in January 1726, it promptly refused to comply with them. It insisted on bringing in and passing an Act in many respects similar to the bill of 1724, to make the revenue perpetual. Portland, on the advice of the Council, rejected it. Thereupon the Assembly nominated an agent to act for it in England, and set about preparing an Address to Parliament detailing the hardships the colony endured from the Crown's refusal to confirm its laws. To prevent the completion of the Address and in the hope that a little reflection might cool the temper of the House, Portland prorogued it. But on reassembling, the House brought in the Act again, and in face of its determination, the Governor gave way and accepted the Act.<sup>2</sup>

The general question why the Assembly was willing even to consider an Act for a perpetual revenue will be discussed later. Its determination to pass the Act at once in this session of 1726, is explained by its intense dislike of the idea of accepting a bill drafted in England. To pass into law a bill, especially a money bill, which it had not prepared, was to permit an encroachment on its rights and privileges.<sup>3</sup>

Meantime in England, the Privy Council had received the reports of the law officers and the Treasury on the draft of 1724.<sup>4</sup> On February 23, 1726, they instructed the Board of Trade to draft a bill for the revenue of Jamaica, taking "particular care that the quantum of the revenue to be provided for in the said draft be sufficient to answer all the charges of the government there."<sup>5</sup>

<sup>1</sup>C.O. 137/17, p. 28. *A.P.C.* III. No. 68, June 1, 1725.

<sup>2</sup>C.O. 137/16 pp. 223-231. *Journals.* II. p. 559. <sup>3</sup>*See infra* p. 151. *cf.* C.O. 138/14, p. 281. Portland to Board of Trade, March 4, 1724.

<sup>4</sup>*A.P.C.* III. No. 68. August 5 1725, Attorney- and Solicitor-General's report; October 14, 1725, Treasury's report. <sup>5</sup>*A.P.C.* III. No. 68.

On May 4, in submitting their draft bill, the Board stated that though they had "had particular regard to the amendments proposed by His Majesty's Attorney-and Solicitor-General," they had "made some alterations therein and have likewise added some amendments of our own."<sup>1</sup> The objectionable clauses of the Jamaica draft of 1724 had been removed;<sup>2</sup> the total annual revenue to be granted in perpetuity increased from £8,000 to £10,000 and the Governor was to be instructed to take care that "such branches of the revenue usually raised by annual Acts for contingent services as have been found to answer the sums for which they are given be appropriated in this Act" to raising the additional £2,000. This sum of £10,000 would, the Board considered, be sufficient for the ordinary charges of the Government and the maintenance of two companies of foot. By this arrangement, the Board hoped to relieve the Governor of one of his most anxious and difficult duties, the yearly struggle to extract from the Assembly supplies for the support of the troops.<sup>3</sup>

On July 5, the draft was approved and ordered to be sent out to Jamaica immediately.<sup>4</sup> Shortly afterwards, the Act to which Portland had unwillingly given his consent in the previous February reached England, but as it was found to differ seriously from the Board of Trade's draft, on August 9, 1726, it was disallowed.<sup>5</sup>

The draft sent from England was laid before the Assembly when it met on October 18.<sup>6</sup> Unfortunately the Lieutenant-Governor, Ayscough,<sup>7</sup> in urging the

<sup>1</sup>C.O. 137/17, pp. 60-67. *A.P.C.* III. No. 68. e.g. "Although his Majesty might in strictness justly challenge to himself the disposition" of any surplus yet as he would certainly direct that it should be applied to some public purpose, the Board left it at the disposal of the Governor, Council and Assembly.

<sup>2</sup>*Supra* p. 147. <sup>3</sup>C.O. 138/17, pp. 67-8. <sup>4</sup>*Ib.* 137/16, p. 257.

<sup>5</sup>*Ib.* 138/17, p. 103; *Ib.* 137/16, pp. 259, 261.

<sup>6</sup>*Journals.* II. p. 579-580. <sup>7</sup>John Ayscough succeeded to the government on the death of Portland. Since 1707 he had been a member of the Council.

House to accept the draft, since none of its Acts had the slightest chance of being confirmed, spoke of the royal "command" that the draft be passed into law. The wrath of the Assembly was immediately aroused. Such a command was "unprecedented and tends to the subversion of their legislature in depriving them of the liberty of preparing their own bills."<sup>1</sup> In vain the Governor explained away his use of the word; the Assembly would not listen. Other questions concerning its privileges came up to occupy its time and attention and in despair, in January 1727, Ayscough dissolved it.<sup>2</sup>

Two general elections made no change in the temper of the Assembly. It would not consider the draft, but continued its quarrel with the Governor and Council over the privileges of its members. As Ayscough wrote to the Board of Trade, the members were "buoyed up with some private letters they have received from home • that His Majesty will recede from the draft of the bill which has been recommended to them."<sup>3</sup> "It is become," he observed "a common saying among some of the leading members that if a Governor don't yield to their desires, they will grant no supplies, and that if the Government can subsist without money, they can do so without laws."<sup>4</sup>

On May 13 1727, the Privy Council, in a very accommodating frame of mind, considered Jamaica's objections to the draft. It was agreed to assure the Assembly that the draft bill was not "intended as a precedent for altering their present method of passing laws.....but only as a signification.....of the terms on which the King will renew their laws." "Their Lordships do not think it material to insist upon the form of passing it as transmitted from hence." Hunter,<sup>5</sup> the new Governor, might accept "any Act which

• <sup>1</sup>C.O. 137/16, p. 367. *Journals*. II. p. 588. <sup>2</sup>*Ib.* pp. 596-99.

<sup>3</sup>C.O. 137/17, p. 5. July 16, 1727. Ayscough to Board of Trade.

<sup>4</sup>C.O. 137/17, p. 13-15, April 24. The same to the same.

<sup>5</sup>Robert Hunter (died 1734), served under Marlborough at Blenheim; 1707, Lieutenant-Governor of Virginia; 1709-1719, Governor of New York; Governor of Jamaica, 1727-34. *D.N.B.* Hunter, pp. 299-300 *A.P.C.* III. p. 8161

shall be prepared by the Assembly provided that the substance thereof be strictly agreeable to the said draft." He might also accept an Act which did not include the additional £2,000 for the troops. The Assembly had opposed the addition of this sum. The Act was, it argued, to grant a perpetual revenue; the troops were only a temporary charge, and, therefore, ought not to be provided for in this Act. It was not appeased by the clause which arranged that, if at any future time, the troops were no longer required, the £2,000 might be applied by the Governor, Council and Assembly to some other public purpose. This reasonable plan the Assembly rejected, for it frankly did not intend to deprive itself of the power which the Governor's dependence on its grants for the troops gave to it.<sup>1</sup>

Armed with these instructions, Hunter reached Jamaica at the end of January 1728.<sup>2</sup> The Assembly met on March 28. The following day a bill for granting a perpetual revenue to the King, his heirs and successors was introduced. On April 6, it was passed and sent to the Council; on the 10th, Hunter consented to it.<sup>3</sup> Thirteen months later, on May 22, 1729, it was confirmed.<sup>4</sup>

A revenue of £8,000 a year was granted to the King for "such a duration as, we hope, is designed by the Divine Providence for the succession of the crown in your royal line." Of this £8,000 the King's quit-rents and fines were estimated to bring in nearly a quarter,<sup>5</sup> the remaining three-quarters being raised by impost

<sup>1</sup>C.O. 137/16, p. 367. *Journals*. 600-20.

<sup>2</sup>C.O. 137/17, p. 40.

<sup>3</sup>*Ib.* p. 49. *Journals*. II. p. 620-629.

<sup>4</sup>C.O. 137/18, No. 36. *A.P.C.* III. p. 843. The Act was received on July 23, 1728, and was sent to Mr. Fane for his opinion. In his hands it remained until January 1729, when on being reminded of its existence, he returned it with a report in its favour. On February 25, it was sent to the Attorney- and Solicitor-General. They replied on March 25, and on May 14, the Board submitted its report to the King. C.O. 137/17, p. 47. *Ib.* 138/17, p. 245. *Ib.* 137/17, p. 135. *Ib.* 138/17, p. 260. *Ib.* 137/17, pp. 139-42. *Ib.* 138/17, p. 261.

<sup>5</sup>£1,958 7s. 6d.

duties on wines and a few other commodities. The now customary sum of £1,250 was appropriated to the forts, and the rest to the support of the Government. If at any time, "the several funds prove deficient or fall short of the clear yearly sum of eight thousand pounds," the Assembly undertook to make good such deficiency. If, on the other hand, there should be "any surplusage . . . . . over and above the said sum (£8,000) that then the said surplusage shall be applied . . . . . to . . . . . such . . . . . use or uses as the Governor, Council and Assembly for the time being by any law or laws shall think proper." All money was to be issued on the Governor's warrant. The Receiver-General was bound to account to the Governor, Council and Assembly "when sitting or any committee by them or either of them to be appointed," for the £1,250 set apart for the forts, "and also . . . . . for all money arising or that shall come to his hands by virtue of this Act." The clause to compel him to account to the Treasury in England or to the Auditor-General of the Plantations was omitted, and in its place appeared a proviso that nothing in this Act shall prevent his accounting to the Auditor-General or to anyone else appointed for the purpose by the King. § 4.

The last clause, "the Magna Carta of Jamaica," continued all the Acts which expired with the Revenue Act of 1703, and enacted that "all such laws, and statutes of England as have been at any time esteemed, introduced, used, accepted, or received, as laws of this Island shall, and are hereby declared to be and continue laws of this His Majesty's Island of Jamaica for ever."<sup>1</sup>

Of the differences between the Board of Trade's draft bill and this Act the most important was the reduction in total annual revenue from £10,000 to £8,000; £8,000 was barely sufficient to pay the ordinary charges of the Government. For all extraordinary expenditure, as for the maintenance of the two companies of foot, the Governor, must apply to the Assembly for additional

<sup>1</sup>C.O. 139/12.

grants. With regard to the relations of the Receiver-General and the English Treasury, the Act, as the law officers pointed out, made no change. If it did not tighten the Treasury's control, as the Crown desired, it did not, like the Act of 1726, lessen it. The Receiver-General was bound as before by the terms of his patent.

It is interesting to note that the Assembly was permitted to tack the clause to continue the laws to this Act. The Crown was usually firmly opposed to this unjustifiable practice. Instructions were given to all Governors that "each separate Act shall deal with but one subject and contain no clause foreign to its title."<sup>1</sup> The Board of Trade had rebuked Handasyd in 1704 for allowing the Assembly to tack to the Revenue Act a clause to continue the laws of Jamaica.<sup>2</sup> Yet in 1728, they apparently never considered refusing to allow a clause not only to confirm the local Acts but to assure to the colony such of the laws of England as had been commonly used there. The Act was, in fact, the result of a bargain between the Crown and Jamaica. The Crown secured a perpetual revenue, Jamaica the confirmation of its laws and privileges.

This is the explanation of the Assembly's willingness to pass a perpetual Revenue Act. It was the price which had to be paid for the confirmation of the island's laws. Some of the Assembly might talk of doing without laws if the Government could do without money, but the majority knew that was sheer nonsense. For the position in Jamaica was different from that in other colonies. When the Crown tried to secure a perpetual revenue in New York or Massachusetts, it could not offer these colonies anything that they considered worth while in exchange for surrendering even part of the power they possessed over the executive from their control of the purse. To refuse to accede to the demands of the

<sup>1</sup>Russell, *Review of Colonial Legislation*, p. 87.

<sup>2</sup>They still refused to allow the colony the benefit of statutes passed since the Restoration—especially the Habeas Corpus Act.

Crown did not mean that their "fundamental" laws would expire; these laws had been confirmed indefinitely and could not be disallowed. But in Jamaica the "fundamental" laws, such as the Act for ascertaining the number of Assemblymen on which depended the composition of the House, the Act for regulating the law courts, the Militia Act expired with the Revenue Act in 1724.

Now these laws were considered by the people as the bulwark of their liberties against the autocracy of the Crown. For instance, by the Act for ascertaining the number of Assemblymen, the Assembly had secured itself from interference from, and dependence on, the Governor and Council. But as the Attorney- and Solicitor-General pointed out, when that Act lapsed, the power to fix the numbers of the Assembly, the number of members from each division, the qualifications of electors and elected reverted to the Crown, which could then lay down rules for the composition of the House "provided such order and method be observed therein as that they may reasonably be understood to be a representation of the people."<sup>1</sup> An Assembly so called would have as much power to make laws as any of its predecessors. It can easily be imagined how distasteful the thought of such a change, of such dependence on the Governor and Council would be to the Assembly. The same applied to the Militia Act. To allow it to lapse would be to allow the Crown to regain all those powers which the Assembly had so carefully limited or taken from it. Therefore, Jamaica could not afford to allow these laws to lapse, and the only way, as the Assembly realised, was to make terms with the Crown.

It also realised that the Crown's anxiety to have the revenue settled on a permanent basis, would probably make it more willing to grant what the Assembly demanded in return, and in its earlier proposals, for instance in 1718, 1722 and the Act of 1723,<sup>1</sup> it puts its demands at their highest. As Lawes said, and as the

<sup>1</sup>C.O. 137/14, p. 342. <sup>2</sup>*Supra* pp. 143-146.



Act of 1723 shows, the Assembly wanted "chiefly to enforce here the Habeas Corpus Act."<sup>2</sup> Though it failed to secure that, it gained a statutory enactment of the island's right to some of the laws of England.

To establish a permanent revenue was not to make a very revolutionary change in the financial arrangements of Jamaica. For the greater part of its history as an English colony, the Crown had had in Jamaica an annual revenue independent of the yearly grants of the Assembly. It was because it had become, so to speak, almost a tradition of the island that the Crown should have such a revenue, and because the Assembly had found from experience that this revenue did not destroy its power over the Governor, that the idea of a perpetual revenue Act was in the end so readily accepted. To grant a perpetual revenue was not necessarily to grant a "sufficient" revenue. The Assembly had no intention of doing that. Hence its determination to fix a sum which could not conceivably make the Government independent; and, as has been seen, it won its point. The Crown secured a revenue only large enough to meet the minimum of the ordinary charges of the Government. In short, the Assembly passed the perpetual Revenue Act because it knew it had to buy the confirmation of its laws, because it realised that it had an opportunity to secure rights which it had always desired, and to pay for them in a familiar currency, a long term Act for a revenue inadequate to meet the annual expenditure of the Government.

It is impossible not to feel that of the two parties to the compromise, the Crown was the less fortunate. That the revenue was perpetual, that the Government would never be left utterly dependent on the Assembly, together with the fact that this Act contained no positively objectionable features, persuaded the Board of Trade to recommend its confirmation.<sup>2</sup> Yet if the sum to be raised

<sup>1</sup>C.O. 137/13, No. 29.

<sup>2</sup>C.O. 138/17, p. 261. After recapitulating the objections to the bill,

was not inadequate at the time for the ordinary charges of the Government (and on this point opinions differed) it would certainly become so as the annual expenditure increased. There was no provision for the smallest defensive force. Though all experience was against it, the Crown apparently hoped that as the security of the island primarily concerned the colonists, they would be willing in the last resort to pay for defence. But the planters knew perfectly well that England could not afford to leave Jamaica defenceless, and would never do so. In fact, the Assembly there, like other colonial Houses, looked on the difficulties of the Governor in time of war as the most effective weapons to extort what it pleased from him.<sup>1</sup>

the Board in its representation of May 14, 1729, concluded "But upon the whole considering that the people of Jamaica have already been for a considerable time in a state of anarchy for want of laws, that Major-General Hunter was not strictly confined by your Majesty's instructions to get a law passed in the same words as the draft, provided the substance of the Act was agreeable thereto; and that we conceive this Act may answer the same end," they recommend its approval

<sup>1</sup>*Supra* pp. 136-7. Cf. Root, *Relations of Pennsylvania and Great Britain*, pp. 256-92.

## CONCLUSION

It is happily becoming a commonplace to insist upon the importance of the West Indian colonies in the history of seventeenth century colonial development. The point is, however, worthy of emphasis for the very good reason that the relations between the West Indian colonies and England throw light on the genesis of England's Imperial policy. It has to be remembered that, save for Virginia, all the royal colonies at the Restoration, and for more than twenty years after, were in the West Indies ; and that it was with regard to them that the Crown was first compelled to evolve that colonial policy which was gradually extended to the whole empire. Then, the West Indian islands were the richest parts of the empire, the part in which the English merchants, whose opinion had great influence on the policy of the Crown, were particularly interested.

The most striking fact that emerges from a study of the early constitutional history of Jamaica is the never-ending quarrels of Governor and Assembly. It is almost possible to say with truth that whenever there was an Assembly, there was a quarrel. With more or less justice, the same might be said of all the colonies. Willoughby in Barbados, Lynch and Molesworth in Jamaica, Bellomont in New York, met the same type of opposition supported by the same type of argument. To say, as many writers have done, that the corrupt and tyrannical conduct of the Governor compelled resistance, or as others would have it, that the Assembly was incurably factious, is obviously inadequate. The explanation lies deeper than the character of the Governors and the quarrelsomeness of the Assembly ; it was the clash of two fundamental principles, centralization against local autonomy.

"I am, and ever have been," wrote Burke a century later "deeply sensible of the difficulty of reconciling the strong presiding power that is so useful toward the

conservation of a vast, disconnected, infinitely diversified empire, with the liberty and safety of the provinces which they must enjoy (in opinion and practice at least) or they will not be provinces at all."<sup>1</sup> The problem was to fix the limits of the respective spheres of the English and colonial Governments; friction arose since each wished to extend the boundaries of its own power, which could be done only at the other's expense. The Restoration period saw the Crown gradually realise the need for "a strong presiding power" within the English dominions, and the development of an administrative system to enforce the orders of the central authority. The English Government regarded the freedom which the colonists had enjoyed as a source of weakness to the empire and made persistent attempts to bring the colonial administration under effective control. The colonists, on the contrary, considered that a large measure of self-government was their right. They argued that they were Englishmen with the rights of Englishmen, that they had been granted local legislatures with the power to make laws, to levy money, and that these two facts taken together meant they had the right to manage their own affairs. Some would have gone as far as the Barbadians who wished, according to Governor Searle, "to establish them a free state. . . . only to remain under England's protection, but not to own England's jurisdiction."<sup>2</sup> When at length the colonists could afford to do without English protection and threw off English suzerainty, the feeling that each colony or state should be master of its own house was strong enough to defeat Hamilton and the Federalists and it is responsible for the constitution of the United States.

The early history of Jamaica illustrates the prevalent tendency in the colonies to try to gain control of the local government. It would be incorrect to suggest that in seizing control of the purse strings at its

<sup>1</sup>Burke, Letter to the Sheriffs of Bristol, 1777.

<sup>2</sup>Searle to the Council of State quoted in Harlowe, p. 102.

first session, the Assembly of Jamaica had any idea of establishing responsible government in the modern sense of the phrase ; it was simply following the example of the English House of Commons, of which it considered itself the Jamaican equivalent. But an executive that is dependent for its supplies on the grant of a legislature is, in the last resort, responsible to that legislature ; for unless it acts in such a way as to keep the latter's confidence, it will get no money. It was the lack of machinery to give effect to the ultimate supremacy of Parliament that caused trouble between Charles II. and the House of Commons. In the colonies, the friction between executive and legislature was intensified by the fact that the executive was subordinate to an external authority whose orders so often ran counter to the wishes of the colony.

In control of the revenue, the Jamaican Assembly had advanced a stage in front of the House of Commons. According to the prevailing political theory, the administration was the King's administration. The House of Commons, therefore, granted him for life a sum which was estimated to be sufficient to support the Kingly state, *i.e.* the dignity of the Crown and all civil and military expenditure. The collection and disposal of the money was left to the King and his officers. But in Jamaica, the Assembly at once took into its own hands the entire administration of the revenue ; it appointed the officers to supervise its collection, and forbade them to issue any sum for any purpose, save those specified in the Revenue Act, without its express consent. The difference between the position of the royal executive in England and in Jamaica was thus important. In England, if the Crown could live within its income, it could do as it chose ; at times, Charles II., with the help of France, was in this fortunate situation. In Jamaica, the Governor had to apply to the Assembly for every penny.

\* The colonists, in general, considered it only just, that the proceeds of local taxes should be spent by the

local government, for local purposes. They, therefore, strongly objected when the Lords of Trade tried to put the administration of the revenue into the hands of royal officials, but they could not deny the King's right to do as he pleased with his quit-rents, and the money from fines and forfeitures. They tried, however, to keep the money they voted under their own control, by drawing a distinction between royal revenue, the quit-rents, fines, forfeitures and escheats, and provincial revenue, money raised by local Acts. They maintained that this provincial revenue was the peculiar property of the colony, and could be used only by the Assembly that voted it. The distinction was first made in Jamaica in 1675.

The financial system set up by the first Assembly in 1664, had been destroyed a few months later by its successor, which transferred the administration of the revenue, subject to certain appropriations, to the Governor and officials appointed by him. In 1674, the Crown appointed a Receiver-General of Jamaica, whose duty it was to collect all taxes raised in the island. To the planters there was a very great difference between a Receiver-General appointed by the Crown and officials appointed by the Governor under the authority of an Act of Assembly. The Crown's action seemed to threaten their revenue with the fate of the 4½ per cent., and their answer was the Revenue Act of 1675, and a point blank refusal to allow the Receiver-General to touch their grants. Their action was an important factor in determining the Lords of Trade to remodel the constitution of the colony after the Irish pattern.

The anxiety of the Lords of Trade to secure a permanent-revenue for the support of the Government had this interesting result ; it led to the disappearance of the distinction between royal and provincial revenue. In return for a perpetual or a long term Act for the revenue, the Lords of Trade offered to allow the Assembly to appropriate the royal revenue to the public use. The

offer was accepted, and from 1682, all the money collected within the island, whether from the quit-rents or customs duties, was the King's, but it went into the public treasury for the public service. It was, however, collected by the Receiver-General and spent by order of the Governor. Jamaica was in this more fortunate than Barbados and Virginia, both of whom had given the Crown a perpetual revenue. The  $4\frac{1}{2}$  per cent. was not solely spent in Barbados, and the quit-rents of Virginia remained, to the end of the colonial period, the exclusive property of the Crown. In the early eighteenth century, the inadequacy of the fixed annual revenue compelled the Governor to apply to the Assembly for additional grants. The Assembly, if it consented to vote the money, often revived its earlier practice, which was now the general custom throughout the plantations, of appointing the officers to collect the special grants. The settlement in 1728 did not alter existing conditions. There was the fixed annual revenue of £8,000, made up by customs dues and quit-rents, and levied in the King's name by the Receiver-General for the ordinary governmental expenses. Extraordinary expenditure had to be met as formerly by an additional grant from the Assembly.

Starting from the assumption that it was the "epitome of the House of Commons," the Assembly of Jamaica set out to gain like powers and privileges. Its officials and its procedure were copied, as far as possible, from those of the House of Commons; the privileges it claimed and the policy it pursued were alike, it claimed, founded on English precedents. With the settlement of the constitutional question in 1680 in favour of the Assembly, the House entered upon a phase through which all representative Houses seem destined to pass, a phase in which they value their powers and privileges not so much as a means "to give the people . . . . that protection against arbitrary power which nothing but a free independent Assembly can give,"<sup>1</sup> as to increase the prestige and

<sup>1</sup>Long I., p. 56.

power of their individual members. The change in Jamaica was signified by the substitution of "the privileges of this House" for "the rights of Englishmen" as the battle cry of the Assembly. Another charge was the growth of faction. Until 1680, Jamaica was singularly free from party divisions, and as far as it is possible to judge now, personal feeling had extraordinarily little influence on public affairs. But with the disappearance of fundamental constitutional questions from political life, personal friendships and personal enmities gained an influence in the colony, and especially, in the Assembly, which they had never previously had. Perhaps the first instance of purely personal dislike affecting the Assembly was the attempt made by Morgan's friends in the session of 1683, to block the passage of the Revenue Act, as a means of retaliating on Lynch for suspending Morgan and Byndloss from the Council. The new spirit is also shown by the bitter attack made on Lynch's memory by the same group, and the personal recriminations which passed between Molesworth and the House a few years later. In the early eighteenth century, feeling between members of the House became so bitter that on more than one occasion its meetings degenerated into a brawl, while suspension of members, either singly or in groups, for trivial misdeeds became an everyday affair. It was inevitable that, while the energies of the House were about equally divided between quarrelling with the Governor and maintaining against the minority what the majority considered the dignity of the Assembly, public business was neglected, greatly to the loss of the island.

The Council had a dual role ; it was at once an advisory and a legislative body. In its advisory capacity, it shared with the Governor in the business of administration, and there were few executive acts to which its consent was not necessary. As a rule, the Council supported the Governor in his contests with the Assembly ; for although the Governor had lost the power of appointing his Councillors, they owed their position to his



recommendation, a fact that generally made for harmony at the Council Board. Samuel Long was the only man in this period who was strong enough to persuade the Council to act with the Assembly against the Governor. Individual Councillors might disagree with the Governor and be suspended for their pains, but the Council as a whole was, with the exception mentioned, in sympathy with the Governor.

The Council acted as the upper House of the legislature. All bills must be passed by it as well as by the Assembly before being presented to the Governor. In the latter part of the eighteenth century, as a consequence of the ill-feeling roused by constant quarrels, the Council's right to share in legislation was challenged as an encroachment on the rights of the Assembly. It was maintained that it had never been the Crown's intention to establish "three distinct independent legislative powers." The Council was to be "merely his (the Governor's) passive co-adjutors; and although he was directed to pass laws with their consent, which implies that he was to pass none without it, yet there can be no doubt but the discretionary power with which he was armed of suspending all or any of them at pleasure, together with the awe and restraint imposed by his presence the authority, must have had suitable effects upon the minds of his associates; so that he could without difficulty lead or drive them to say or do whatever he judged fitting."<sup>1</sup> "In process of time, however, the very natural desire of assimilating itself to the upper House of the British Parliament, influenced this assistant board to the measure of separating itself from the Governor and framing itself into a third independent legislative estate."<sup>2</sup> One of the chief reasons given in proof of this theory, besides the fact that Governor was present when the Council was acting in its legislative capacity, is that "a great proportion" of the laws passed previous to 1681 were enacted by Governor and Assembly only.

<sup>1</sup>Long I., p. 167. <sup>2</sup>G. W. Bridges, *Annals of Jamaica* (1828), p. 443.

Such a proposition cannot be maintained. So far from "a great proportion" of the early laws having been passed by Governor and Assembly only, it would be difficult to find such laws. The enacting form varied, but the Council was always included; for example "the Governor, Council and Gentlemen of the Assembly" in 1664, "the Governor, Council and Assembly" in 1673, "the Governor, Council and Representatives of the Commons of this Island now Assembled" in 1677. As early as 1664, the Acts conclude thus:—

<p>" Passed the Council the 10th of Oct., 1664.</p>	<p>Consented to this Thos. Modyford Gentlemen of the Assembly. T. Whetstone, Speaker."<sup>1</sup></p>
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Again one of the Council's objections to the proposed constitutional change in 1678, was that the new model excluded it from all part in legislation; for the Assembly contended that the new enacting form "by the King's Most Excellent Majesty, by and with the consent of the General Assembly," did not include the Council and refused to allow it to touch its bills in any way. The Council indeed took an equal and independent part in legislation. It was not until 1679 that the Assembly claimed the sole right to initiate money bills and not until 1702 that it denied the Council's right to amend such bills. That the Council did amend money bills on various occasions before 1702 is on record, but after that date, despite the support of the Board of Trade, it was unable to withstand the Assembly's challenge.

It must not be forgotten that during the early years of the colony's existence, beneath the constant quarrels between Governor, Council and Assembly lay implicit a question of fundamental constitutional importance, a question to which the relations between Jamaica and the Crown give the first answer in Imperial history.

<sup>1</sup>C.O. 139/1, p. 65. Cf. *supra* p. 138, note 4.

Jamaica was the first colony England acquired by conquest. Its government, therefore, raised problems of great importance, problems of colonial administration which no English statesman had previously been called upon to solve, but which were to demand an answer insistently and repeatedly from that day to this. In Jamaica, the task of the English Government was not complicated, as in later conquests by the existence of a conquered race differing in religion, laws and customs from their conquerors. The fact that the colonists were all English-born made the issue between Crown and colony all the clearer. Does the Crown possess unlimited power over conquered territory? Can it establish what manner of Government it pleases and alter and withdraw privileges it has granted? Do English subjects who settle in territory conquered by English forces retain their political and civil rights as Englishmen or are they dependent for the enjoyment of these privileges upon the grant of the Crown?

It has been seen how at the Restoration, the Crown gave to Englishmen who settled in Jamaica the same rights of self-government as settlers in other colonies enjoyed. It was a natural decision. It was the obvious and the safest thing to do, to set up a familiar type of government; and in an age when men thought in terms of political rights, the economic development of the island depended upon the grant of political privileges. It has been seen how the planters immediately and firmly used the powers granted to them to establish in Jamaica the English constitutional principles that in the making of laws and the raising of money the consent of the representatives of the people is essential. The Assembly's action, representing local independence, inevitably came into conflict with the ideal of the Lords of Trade, of an efficient colonial administration directed and controlled from England. In the struggle which followed, the Crown acted on the assumption that it still possessed absolute authority over Jamaica

as a conquered island. Its virtual surrender was not merely a defeat for the policy of centralization, but an acknowledgement that by granting Jamaica certain constitutional privileges, it had deprived itself for ever of this absolute power. At the same time, it was made clear that English subjects who settle in English conquests do not retain their privileges as Englishmen by right ; if they enjoy such privileges it is by direct grant from the Crown.



# APPENDICES

## APPENDIX I.

### GOVERNORS OF JAMAICA 1660-1729

- 1661 General Edward Doyley.  
1661. Lord Windsor (Sir Charles Littleton,<sup>1</sup> Lieutenant-Governor, 1662)  
1664. Sir Thomas Modyford.  
1671. Sir Thomas Lynch. Lieutenant-Governor.  
1674. Lord Vaughan.  
1678. Lord Carlisle.  
1680. Sir Henry Morgan. Lieutenant-Governor.  
1681. Sir Thomas Lynch.  
1684. Hender Molesworth. Lieutenant-Governor.  
1685. Sir Philip Howard  
1687. Duke of Albemarle  
1688. Sir Francis Watson. President of the Council.  
1689. Hender Molesworth  
1689. Earl of Inchiquin.  
1692. • Sir William Beeston.<sup>2</sup>  
1701. Brigadier William Selwyn.  
1702. Peter Beckford. Lieutenant-Governor.  
1702. Colonel Thomas Handasyd<sup>3</sup>  
1710. Lord Archibald Hamilton.  
1716. Peter Heyward. President of the Council.  
1716. Thomas Pitt  
1717. Sir Nicholas Lawes.  
1721. Duke of Portland.  
1724. John Ayscough, President of the Council.  
1727. Colonel Robert Hunter.

## APPENDIX II.

### *Revenue Act passed by Governor and Council 1661.*

#### BY THE GOVERNOR AND COUNCIL.

Whereas the Governor and Council having taken it into serious consideration, the great charge of the Government of this island and other public charges, It is therefore thought fit by the Governor, with the advice and consent of his Council, and it is hereby enacted and ordained by the

<sup>1</sup>As Windsor's Deputy.

<sup>2</sup>Lieut.-Governor, 1692, Governor 1699

<sup>3</sup>Lieut.-Governor 1702, Governor 1704

Governor and Council and (by) the authority of the same, that all strong liquors that now are or shall be brought into this island, are to be entered and shall pay the rates, hereinafter mentioned, (that is to say) every tun of Spanish or French wine four pounds sterling, for every gallon of brandy or spirits sixpence per gallon and for every tun of beer twenty shillings and so after that rate for a smaller or greater proportion. And what master, commander, or ship merchant, mariner, or any other person whatsoever, shall put into any boat with intent to land the same, or shall put on shore any of the liquors above mentioned, the said excise not being paid or otherwise agreed for, with the Treasurer for the time being or without any Officers present to take an account of the same, shall forfeit the same and also as much more as the value thereof in money shall amount unto, the one-third of all such forfeitures shall be to the public use, one-third to the Treasurer and Clerk of Entry for the time being, and one-third to the discoverer, informer or seizer of the same, to be recovered upon proof made before the Governor or any two of his Council, or any two Justices of the Peace that he shall call to his assistance for that purpose. And for the better levying the excise aforesaid, be it further enacted by the authority aforesaid, that there be a seal appointed, with which the cask of all such liquors, which are duly entered and paid or agreed for, shall be marked, and what cask shall be found on shore unmarked shall be forfeited in manner aforesaid, and whosoever shall presume to counterfeit the said mark and be thereof legally convicted, shall stand in the pillory for the space of one whole hour, and lose both his ears. And if the officers and if the officers (sic) shall lend the said seal, or suffer the same to be out of his (sic) hands, so that the Country thereby may be defrauded (they) shall incur the same penalty as aforesaid. And in regard that strangers that come hither may not have the command of ready money, Be it further enacted by the authority aforesaid, that the owners and disposers of such liquors, shall upon good security given to the Treasurer for the time being, have three months' time for the payment thereof, anything in this Act to the contrary notwithstanding. And due abatement shall be made what leakage after entry of the said liquors shall be made appear to the Treasurer, by the oath of two sufficient and impartial witnesses. Provided nevertheless and be it further enacted by the authority aforesaid, that if the said monies be not paid at the three months' end wherein the same is agreed for, but the Treasurer forced to sue for the same, that in such case, the court wherein he shall prosecute his action shall allow him treble costs of suit. And be it further enacted by the authority aforesaid that in case the masters or pursers of all ships importing the said liquors, shall and do make full entry thereof upon oath, that then he shall be allowed one per cent. for portorage, otherwise no portorage shall be allowed him. And be it further enacted and ordained by the authority aforesaid, that for the better collecting of the said excise and true account to be taken of the same, a Clerk of Entries be appointed who is truly to receive and set down all entries that shall be hereafter made, and the same safely keep as a check

whereby the Treasurer may receive a true charge from him when he shall be called to account, also a Treasurer to receive the same, the said Treasurer and Clerk of the Cheque to be nominated and appointed by the Governor and Council for the time being and convenient salaries be appointed for them, which said Treasurer, Clerk or either of them and such officers appointed for them with the approbation of the Governor and Council had thereunto, to make diligent search for all liquors, which they suspect to have been landed, without paying or contracting for the said excise, and in case of resistance, they or any of them may by a warrant obtained from a Justice of the Peace, who in such case is authorised and required to grant the same and by assistance of constable or constables break open the doors of any place or places, where the said liquors shall be reasonably supposed to be, in the execution whereof all the good people of this island are hereby authorised to side (sic) and assist them. And for the better and more just proceeding therein it is further enacted and ordained by the authority aforesaid that before either the Treasurer or the Clerk of Entries and all searchers and other subordinate officers appointed by them, shall act and officiate by virtue of their places, they and every of them taking their corporal oath upon the holy evangelists well truly and faithfully to discharge their respective trusts and duties therein Given under my hand the twenty-second day of June, 1662 (1).

EDWARD DOYLEY<sup>1</sup>

### APPENDIX III.

#### *Revenue Acts of the Assembly, January 1664.*

(a) An ACT for preventing neglect and fraud in receiving customs and public money.

• Whereas public impositions and levies of money are absolutely requisite for the maintenance and support of every government, and whereas the Governor, Council and Gentlemen of the Assembly have by divers Acts bearing date with these presents authorised and appointed the raising money by imposts and . . . <sup>a</sup> for the aforesaid necessary uses, and whereas they have further considered that the just and equitable collection and disbursement of the same will both advance the public interest and service of this His Majesty's island and give satisfaction to those from whence its levied and collected, they do therefore enact and ordain and be it enacted and ordained by the authority of the Governor and Council with the consent of the Gentlemen of the Assembly that the Receivers, Treasurers and Collectors of all the money raised and to be raised by custom, impost or



other levy shall from the first of March next ensuing the date hereof monthly and for every month pay into the two Public Treasurers or one of them which shall be commissioned by the Governor for the time being, and approved of by the Governor, Council and Assembly all and every the sums of money by them received, collected or levied, as also together with a fair and particular account of the said imposts and every part thereof which the said Public Treasurers (or one of them) shall immediately remit into the hands of the Governor to be examined that all the omissions, neglects and frauds of all or any of the said Receivers, Collectors or Treasurers may be the better prevented, discovered and punished. And that the said monies may with the more expedition and less embezzlement be employed to the uses for which it (sic) is raised and intended as is particularly declared by other Acts bearing date with these presents or as shall be hereafter appointed by the further Acts and Considerations of the Governor, Council and Assembly, it is therefore hereby further ordained and enacted by the authority aforesaid that the said two Public Treasurers (or any one of them) shall have power sufficient in the law to also demand and take account from all or any the said Receivers, Collectors or Treasurers and also all other persons whatsoever that now have or possess or hereafter may have or possess any lands, houses, properties, rents, or servants that do now belong or hereafter may belong to His Majesty or to this his island. And all the said persons so employed or concerned as aforesaid are hereby required and commanded to give in their accounts, rents or payments as aforesaid. And the said two Treasurers (or one of them) shall and may by virtue of the authority aforesaid upon the neglect or refusal of any of the said officers, or other persons suspend their employments and into the aforesaid houses, lands and tenements to re-enter and enjoy as in His Majesty's former right or title, any former common grant or patent to the contrary notwithstanding. And it is further enacted and ordained by the Governor, Council and with (the) consent of the Gentlemen of the Assembly that the said two Public Treasurers for the time being shall give sufficient caution and security to the Governor for their honest and faithful discharge of the said office and trust. And that they shall truly and ingenuously (upon oath) pay and render monthly at the time appointed to the said Governor for the time being such accounts, such sum or sums of money as shall be then in their hands or custody. And the said two Public Treasurers are by virtue of the authority aforesaid required to keep exact account of such their said receipts and disbursements and accounts hereof and of every part thereof they shall give (one in a year at least) the Governor, Council and Gentlemen of the Assembly a fair written and just account upon their said oath. And of (sic) the said Public Treasurers (for the time being) do by any means direct or indirect use any neglect they shall be therefor prosecuted at law and suffer the extremity of their cautions obligations and for every their or either of their deceit or fraud in their said trust and employments be indicted as felons and after conviction accordingly punished, any law, customs or usage to the contrary notwithstanding.

(d) An Additional ACT for the speedy raising a Public Treasury in this island.

Whereas its certainly known and observed that such as have licence to vend and sell strong liquors do receive great and ready profits thereby and expend none or little thereof to the advancing of planting or other proper interests of this His Majesty's island of Jamaica and whereas the inconveniences which daily arise in this island for want of a public stock and treasury are many and great for the prevention whereof and for the carrying on of the public needful work of the island, It is enacted and ordained by the Governor and Council together with the consent of the Gentlemen of the Assembly, and be it enacted and ordained by the authority aforesaid that all and every person and persons whatsoever within this island which at the publication hereof or from and after the publication of this Act shall have and receive from the Governor of this island a licence to sell and retail any strong liquors in any part of this island shall pay for the same liberty of having and enjoying such licence yearly and once a year as a constant tax the full sum of 40s. sterling the same be paid in manner and form and at the same time and season of the year as is provided in the Act for Poll money to be collected and gathered by the collectors therein provided and paid to the Public Treasurers therein appointed after the same manner as is there provided in the aforesaid Act for Poll money and in case any person or persons whatsoever within this island (having any such licence as aforesaid) shall refuse to pay the same unto the Collectors that then the said Collector or Collectors shall have power to distrain for the same in the manner appointed in the aforesaid Act for Poll money. Also he or they so denying the said payment shall be incapable of having or enjoying any such licence for the vending of strong liquors aforesaid for and during the space of three whole years to commence from such refusal as aforesaid, any law, custom or usage to the contrary in any wise notwithstanding.

(e) An ACT for the speedy raising of a Public Treasure.

Whereas diverse inconveniences did and do daily arise for want of a public stock and treasure, and also many other works of public good and concernment to this island have been neglected and cannot be carried on unless some speedy course be taken for raising such public stock and treasure as aforesaid, and it likewise appeareth that the most just and ready way for raising of the same will be by laying a tax upon any person belonging to or inhabiting this island, being above the age of 12 years, the Governor, Council and Gentlemen of the Assembly of this island thought fit to enact and it is hereby enacted and ordained that every person now inhabiting or belonging to the same, being of the age of 12 years and upwards shall pay yearly to the persons hereafter empowered to collect the same the sum of 12d. of coined money of silver. And it is further enacted by the consent aforesaid that the persons hereafter named and empowered to collect the

same are hereby empowered to receive of every master or mistress of a family 1 *sd.* a head for him and herself and every person belonging to his or her family (be they free servants or slaves) and upon refusal and nonpayment thereof the Collectors hereafter named are hereby empowered and (it) shall and may be lawful for the said Collectors to levy by distress on the goods and chattels of him, her or them so refusing the aforesaid sum of 1 *sd.* per head, returning to the owners the surplus of such said distress if any be. And it is hereby further enacted and ordained that every master or mistress of a family that shall have any hired servant or servants shall pay for such servant or servants at the rate aforesaid deducting the same out of his, hers or their respective wages. And whereas there are sundry great parcels of land taken up by persons that utterly neglect the planting and manuring the same to the hindrance of those that otherwise would endeavour the improvement, for remedy of which, it is hereby enacted and ordained that any person or persons that shall take up any quantity of land and not plant or manure within six months after such person or persons shall claim title thereto (that is to say) that shall not plant and manure five acres out of every hundred acres so taken up and claimed by him or them and so proportionably for a greater or lesser quantity that then such person or persons shall pay for every acre by them so taken up and claimed the sum of 3 *L.* per acre yearly until he or they shall plant the same according to the proportion aforesaid to be collected and gathered in the like manner and form as the aforesaid tax of 1 *sd.* per head. And in cases no such distress can be found upon the said land for the levying of the said sum of 3 *L.* per acre, then such to be free for any person or persons to plant and manure the same, and the pretended and real title and claim as aforesaid to cease and be utterly void. And it is hereby further enacted and ordained that the said tax of 1 *sd.* per head and 3 *L.* per acre as aforesaid be collected at or before each last day of April, and that the first day of payment of the said taxes be made at or before the last day of April next ensuing. And be it further enacted and ordained and it is hereby enacted and ordained that the Constables of each respective parish do collect and levy the said taxes and if any such Constable or Constables shall be found negligent of the said levy and collection he or they for such their neglect shall forfeit the sum of 4 *L.* sterling to be recovered in any of His Majesty's courts of judicature in this island by bill, plaint or information wherein no respite, protection or wager of law is allowed the one-half thereof be given to him or them that shall inform or sue for the same, the other moiety to His Majesty for the public use of this island. And ~~it is~~ hereby further enacted and ordained that Lewis Ashton Esq. and Samuel Long Gent. be appointed and are hereby appointed Treasurers for receiving the taxes and levies aforesaid. And that the said Treasurers or one of them do at convenient time issue out warrants under his or their hands to the respective Constables of each parish to empower the said Constables for levying the taxes aforesaid. And it is hereby further enacted and ordained that each Constable as aforesaid do make return to

the said Treasurers (or) any one of them of their warrants together with the sum which he or they have collected in their respective parishes within 4 days after every such last day of April. And it is further enacted and ordained that each of the said Treasurers do bind themselves in the penal sum of 1000L sterling to be from time to time accountable and responsible when they shall be thereunto called by the Governor, Council and Assembly for such sum or sums which they shall receive by virtue of this or any other Act. And that they shall not pay or issue out any money so received to any use whatsoever without the consent of the Governor, Council and Assembly. And it is hereby further enacted and ordained that every Constable so collecting shall for their said collection and pains therein have for every pound so collected the sum of 3d. And that the said Treasurers for their pains in receiving and issuing out such sums of money which they shall receive as aforesaid shall have the sum of 6d. for every pound. And it is hereby further enacted and ordained that if it shall happen that any person or persons shall be sued for putting into execution this Act or any clause herein contained that such person or persons so sued shall have liberty to plead the general issue and bring and produce this Act in evidence, any law, custom or usage to the contrary hereof in any wise notwithstanding. And it is further enacted and ordained and it is hereby enacted and ordained that no further or other tax or levy or assessment whatsoever be imposed or levied upon the island or the inhabitants or residents thereof without the assent of the Governor, Council and Assembly of this island. Provided always and it is the true intent and meaning hereof that all and every person or persons that shall come and arrive at this island at any time after the making and establishing this Act and do here plant and settle shall be free and clear from any such levy tax or assessment herein mentioned from the time and term of the first whole year after their said arrival, anything herein contained in any wise notwithstanding.

(d) An ACT for issuing money out of the Public Treasury.

Whereas the Governor and Council with the consent of the Gentlemen of the Assembly have thought fit and necessary to lay an impost on strong liquors and levy other taxes in this island as by the particular Acts for that purpose made more plainly appear for the defraying of several officers carrying on the work of Fort Charles at Port Royal and other accidental charges which to this Country may arise, and have appointed Public Treasurers for taking account of and disbursing the said money so to be raised, Be it therefore enacted and ordained and it is hereby enacted and ordained by the authority aforesaid that the present Governor of this island shall have and receive from the Treasurers appointed as aforesaid for his salary yearly one thousand pounds sterling to be paid first as it comes due and is received, to commence from the publication hereof: likewise that the chief Receiver of the customs and imposts have for his salary 80L per annum and that his deputy have and receive 40L per year.

And that the Judge or Judges for the courts of judicature shall receive from the Treasurers aforesaid for the court to be held at the town of Port Royal and St. Catherine's late St. Jago de la Vega 120L and for the courts to be held at Morant 80L sterling per annum to commence from the publication hereof as aforesaid.

Item the Clerk of the Assembly shall have and receive of the Treasurers aforesaid for the first session of the Assembly the sum of 20L sterling and for every session of the Assembly after this first session the sum of 10L sterling.

Item the Provost-Marshal shall have and receive of the Treasurers as aforesaid for his attendances on the Assembly at this first session the sum of 10L sterling and every session of the Assembly which shall be after the first session the sum of 6L sterling

Item the Treasurers as aforesaid shall pay out of the first money they shall receive into the Public Treasury the sum of 150L sterling towards the carrying on the building the works of Fort Charles at Port Royal, and shall also pay the aforementioned sums to each particular person above expressed proportionably as monies shall come into their hands for the public use. And it is hereby enacted and ordained by the authority aforesaid that this Act shall be a sufficient warrant for the Treasurers for the time being to pay the above mentioned sum or sums to the person or persons, use or uses aforesaid they taking receipts for the same or any part thereof which they shall pay, and such receipts by them so taken shall be their discharge for the payments of all such sum or sums of money as aforesaid

(c) An ACT for the raising of a Public Revenue out of all strong liquors imported or to be imported into this island.

Forasmuch as an Act has formerly been made by the Governor and Council of this island for the raising of the revenue for the maintenance and support of the Government, and the other public charges of this island upon all strong liquors that hath or hereafter shall be imported into this island, and whereas by experience it is daily found that there are several inconveniences grow and arise for want of particular and more special directions in the execution of the same, Be it therefore enacted and ordained by the Governor, Council and Gentlemen of the Assembly, and it is hereby enacted and ordained by the authority aforesaid that the Receiver of the revenue (to) be raised and hereafter appointed shall have such and so many substitutes and persons under him as shall be requisite for his charge and employment who with the Receiver shall be named by the Governor and approved of by the Council. And be it further enacted and ordained, it is hereby enacted and ordained by the authority aforesaid that whatsoever master or commander of any ship or ships merchantman, factor purser mariner or any other person whatsoever who shall put on shore any of the liquors contained or mentioned in this Act before his or their agreement with the Receiver for the time being or without an officer's presence to

take an account of the same that then the said person or persons who shall endeavour in any such fraudulent way to land any such liquors shall forfeit and lose the same and also as much more as the value thereof in money shall amount unto. One-third whereof shall be to the officer informer (or) discoverer, the other two-thirds thereof to the use of the public service of this island to be recovered by bill, plaint or information in any Court of Justice in this island where no protection or wager of law shall be allowed. And all manner of persons are hereby required to be aiding and assisting to the Receiver, his agents the informer, discoverer or seizer so landing contrary to the true intent and meaning of this Act.

And it is hereby also enacted and ordained that a public iron be appointed to brand and mark all and every the casks or vessels which shall have in them liquors as aforesaid and make a fair impression thereon. And whomsoever (sic) shall presume to counterfeit the said mark and be thereof lawfully convicted shall stand in the pillory for the space of one whole hour and lose both his ears. And if the Receiver or any of his agents shall lend the said mark or suffer the same to be out of his hands so that the country thereby may be defrauded then he shall incur the same penalty as aforesaid. And be it enacted and ordained and it is hereby enacted and ordained by the authority aforesaid that the owners or disposers of such liquors upon his or their bond given to the Receiver for the time being shall have 'four months' time for the payment of the impost rates hereby intended and hereafter specified (that is to say) at the end and expiration of the first month one-third part thereof, at the end of the second month likewise one-third part thereof, and at or before the end or expiration of the fourth month to pay the last third part or whole sum due for the duty of such liquors or goods so imported. And be it further enacted and ordained by the authority aforesaid that all Madeiras and fiall wines shall pay with Spanish and French wines after the rates of 4L sterling per tun, for every gallon of brandy or spirits 6d. sterling per gallon, for every tun of beer and rum except beer imported or to be imported from New England which is provided for in a particular Act for the purpose intended the sum of 40s. sterling and so after that rate for a small(er) or greater proportion. And it is further enacted and ordained that all the said rates contained in this Act shall be paid and received in current coined money of silver. And it is further enacted by the authority aforesaid that if all or any of the aforesaid wines and liquors shall be landed and afterwards exported the said wines and liquors shall only pay  $\frac{1}{2}$  customs in the manner and form aforesaid. Provided always and be it enacted by the authority aforesaid that the Receiver shall keep a book fairly written and make daily and due entries of all (and) every the quantity or quantities of all such liquors as be brought in or imported as aforesaid, and of all and every the sums of money and from whom due and the same keep in a readiness to be issued forth according to the several uses and intents of the Acts of the Governor, Council and Assembly bearing date with these presents. And the Receiver and his agents are hereby

required to exercise constant diligence in their places and duty for the dispatching of the merchants and preventing all frauds committed or to be committed against this Act. And if the Receiver or his agents shall be remiss or negligent therein, he or they shall be removed and displaced and suffer such other punishments as the Governor and Council upon complaint thereof shall find cause to inflict, and such other Receivers or agents be nominated and appointed by the Governor and Council as shall be thought meet and fitting by them for such employment. And its further enacted by the authority aforesaid that it shall be lawful for any manner of person or persons whatsoever to inform discover and accordingly also to any sworn officer to make seizin of any liquors that shall be privately or unlawfully conveyed on shore contrary to the true intent and meaning of this Act. And all such discoverers and informers shall receive to his own use, one-third part of all liquors so seized, the other two-thirds shall be and remain to the use of the public service of this island as aforesaid.<sup>1</sup>

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